

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, *et al.*,) June 6, 2018
)
Debtors.)

Siemens Transportation) Docket No. 3:18-AP-030 (LTS)
Partnership Puerto Rico,)
S.E.) *in 17-BK-3567 (LTS)*
)
Plaintiff,)
v.)
)
Puerto Rico Highways and)
Transportation Authority,)
et al.)
)
Defendants.)

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH DEIN

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

1 APPEARANCES:
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3 For The Commonwealth
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5 Mr. Paul V. Possinger, PHV
6 Mr. Brian Rosen, PHV
7 Mr. Ehud Barak, PHV
8
9 For the U.S. Trustee
10 Region 21: Ms. Monsita Lecaroz Arribas, AUST
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12 Fee Examiner: Mr. Bradley Williamson, PHV
13 Ms. Katherine Stadler, PHV
14
15 For Official Committee
16 of Unsecured Creditors: Mr. Luc Despins, PHV
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18 For Puerto Rico Fiscal
19 Agency and Financial
20 Advisory Authority and
21 Puerto Rico Electric
22 Power Authority: Mr. Nathan Haynes, PHV
23 Mr. Arturo Diaz, Esq.
24 Ms. Katuska Bolanos, PHV
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26 For Puerto Rico Fiscal
27 Agency and Financial
28 Advisory Authority: Ms. Suzzanne Uhland, PHV
29 Mr. Luis Mariani Biaggi, Esq.
30 Mr. William Sushon, PHV
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32 For Ad Hoc Retiree
33 Committee: Mr. Robert Gordon, PHV
34 Mr. Landon Raiford, PHV
35 Mr. Hector Mayol Kauffman, Esq.
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37 For the COFINA Agent: Mr. Joseph Minias, PHV
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39 For the Government
40 Development Bank: Mr. Oreste Ramos, Esq.
41 Ms. Giselle Lopez Soler, Esq.
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43 For Siemens
44 Transportation
45 Partnership Puerto Rico: Ms. Claudia Springer, PHV
46 Mr. Andrew Soven, PHV
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1 APPEARANCES, CONTINUED:
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4 Puerto Rico:

Mr. John Dorsey, PHV

5 For Santander:

Mr. Nicholas Crowell, PHV

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2	WITNESSES:	PAGE
3	None offered.	
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5	EXHIBITS:	
6	None offered.	
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San Juan, Puerto Rico

June 6, 2018

At or about 9:39 AM

* * *

THE COURT: Again, buenos dias. Welcome, counsel, parties at interest, members of the public, press and those observing here and in New York and the telephonic participants. It is always good to be back in San Juan. I look forward to hearing of progress in the Title III proceedings and of the work of PREPA and other government constituencies in strengthening the provisions of necessary civic operations and services here in Puerto Rico in the course of status reports and remarks in this hearing.

I remind all of you who are attending here or listening to the proceedings that, consistent with court and judicial policies and the Orders that have been issued, there is to be no use of any electronic devices in the courtroom to communicate with any person, source, or outside repository of information, nor to record any part of the proceedings.

Thus, all electronic devices must be turned off unless you are using a particular device to take notes or to refer to notes or documents already loaded on the device. All audible signals, including vibration features, must be turned off, and no recording or any transmission of the hearing is permitted by any person, including but not limited to the

1 parties or the press.

2 Anyone who's observed or otherwise found to have been
3 texting, e-mailing, or otherwise communicating with a device
4 from a courtroom during a court proceeding will be subject to
5 sanctions, including but not limited to confiscation of the
6 device and denial of future requests to bring devices into the
7 courtroom.

8 Now, I was pleased to see from last night's motion
9 filing that there is a settlement in principle of the
10 Commonwealth-COFINA dispute. This is an enormously
11 significant development that marks a great step forward in
12 these Title III proceedings.

13 Of course the settlement in principle is subject to
14 negotiation of documentation, and any settlement of this
15 dispute is subject to Court approval following disclosure,
16 notice, and full opportunities for objectors to make
17 themselves heard. But the mediation team and the mediation
18 participants deserve our acknowledgment and thanks for this
19 very significant progress.

20 I assume that the case status reports will start on
21 this note. And who will be speaking to this issue?

22 Thank you.

23 MR. ROSEN: Thank you very much, Your Honor. Brian
24 Rosen, Proskauer Rose, on behalf of the Oversight Board.

25 Your Honor, that was actually going to be about a

1 minute down the way, but if you'll allow me just to move
2 forward on some other things first. Your Honor, on April 19th
3 and 20th, the Board certified fiscal plans for six entities;
4 the Commonwealth, PRASA, PREPA, GDB, HTA and UPR.

5 And such certifications were the culmination of
6 months of analysis and development of information by the Title
7 III debtors, the Oversight Board, the government and the
8 respective professionals. The certifications were made during
9 public hearings with the full -- excuse me, the full
10 opportunity for people to be heard in discussion, and the
11 fiscal plan served is the foundation for the framework for the
12 plans of adjustment that are under development.

13 On May 16 and May 15, Your Honor, the mediators
14 hosted information sessions in New York which allowed for the
15 presentation of those fiscal plans, and for the Board and the
16 government to respond to any questions that creditors had.
17 This lasted two full days, Your Honor, and we believe that it
18 was quite productive.

19 Notwithstanding those certifications, Your Honor,
20 and as the Board has, and its representatives have repeatedly
21 stated, the fiscal plans are living, breathing organisms which
22 are subject to change based upon facts and circumstances.

23 And as reported, Your Honor, the Board and the
24 Commonwealth continue to engage in dialogue with respect to
25 potential modifications to the fiscal plans so that the needs

1 of the government and the means for implementation to get to
2 the goals of the fiscal plans can be implemented.

3 As the Court is aware, the next step in this process
4 is the formulation of the respective budgets. This is
5 currently being undertaken and the Board is very hopeful that
6 it will be completed in the near future.

7 The conclusion of or the certification of the fiscal
8 plan process has allowed us to recommence our discussions with
9 individual creditors, and through the use of the mediators, to
10 actually have a productive dialogue with respect to moving
11 forward on plans of adjustments or other qualifying
12 modifications in the Title III and the non-Title III entities.
13 We continue to work with the mediators to frame the issues,
14 and whether it is in a formal mediation process, Your Honor,
15 or something informal.

16 Your Honor, against the backdrop of this -- I
17 apologize -- there are several matters which remain in
18 litigation. As the Court is aware, yesterday there were
19 several things heard by the First Circuit from this Court.
20 Two decisions, Your Honor. Specifically, the Peaje decision,
21 as well as the Court's decision in connection with the PREPA
22 Relief from Stay Motion.

23 Likewise, there are other matters which the Court
24 still has under review, which will frame some of the issues
25 which will allow us to go forward in connection with those

1 discussions with the individual creditors.

2 Your Honor is correct, yesterday there was the
3 announcement of the preliminary resolution of the
4 COFINA-Commonwealth dispute. And we applaud all of the
5 efforts of the mediators and the two Board agents in reaching
6 that preliminary understanding.

7 We support the urgent motion and the relief requested
8 in that, Your Honor, to allow the parties to try and reach
9 definitive documentation on a settlement so that the parties
10 can then consider how to move forward with respect to a plan
11 of adjustment for COFINA.

12 THE COURT: Now, the urgent motion didn't include a
13 specific proposal as to objection and reply dates. And so I
14 had in mind to enter an Order setting Monday as the objection
15 deadline and Wednesday as a reply deadline. I'll ask you and
16 anyone else who wants to speak to this.

17 Mr. Despins, would you come to the podium?

18 MR. DESPINS: Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. DESPINS: Pleased to be here under these
21 circumstances.

22 THE COURT: Yes.

23 MR. DESPINS: So the committee, as the Commonwealth
24 agent, is a joint movant in that motion. We did not put a
25 deadline, but the deadlines that you provide are absolutely

1 acceptable to us. And I can speak for the COFINA agent, that
2 it will be acceptable to them as well.

3 THE COURT: Thank you. And I do have a note that
4 Mr. Minias and Ms. Uhland -- actually, Ms. Uhland wanted to
5 speak about GDB. That Mr. Minias is in New York for the
6 COFINA agent and wanted to be heard.

7 MR. MINIAS: Yes, Your Honor, Joe Minias from Willkie
8 Farr Gallagher on behalf of the COFINA agent. Those dates for
9 the objection and reply are certainly fine with us.

10 We'd like to express our sincere gratitude to the
11 Court, to your clerks, to chambers and to the mediation team
12 for all the time and effort spent with us these past few
13 months, and of course to Mr. Despina and his constituents for
14 all of his hard work to get to this important stage in the
15 case.

16 THE COURT: Thank you.

17 MR. ROSEN: Your Honor, I will defer to Ms. Uhland a
18 little bit later on for a discussion of the GDB.

19 Your Honor, as you are aware, previously there was a
20 bar date set for May 29th. And pursuant to an Order of the
21 Court, that was extended for a 30-day period to June 29. And
22 subsequently, what we did, Your Honor, is we have included
23 additional radio spots, publication in local periodicals, and
24 we have kept open the collection centers throughout Puerto
25 Rico to allow for more proofs of claim to be filed.

1 And during the intervening week of May 29 to today,
2 approximately 3,000 more proofs of claim have been filed,
3 bringing us to a total of approximately 17,300 proofs of
4 claim. With respect to those, they can easily be -- and they
5 total, Your Honor, approximately 46 billion dollars.

6 They can be, however, categorized into several main
7 categories, three specific, Your Honor: Bonds that have been
8 filed of about 38 billion dollars, tax refunds of
9 approximately 400 million dollars, and pension related or
10 retiree related claims of about 3.4 billion dollars.

11 There are additional litigation claims, Your Honor,
12 of about an additional 2.8 billion dollars, but the lion's
13 share of the 46 billion dollars, Your Honor, are essentially
14 those three categories I referred to. And we think,
15 therefore, they will be easily reconcilable, because they
16 will -- in the bond situation, we obviously know with the
17 bonds that have been issued, Your Honor, and the tax refund
18 situation, we believe that will be reconciled through the
19 administrative processes of the government, likewise with
20 respect to the pension retiree existing claims.

21 At the same time, Your Honor, the Board, together
22 with AAFAF, have been engaged in bringing on claims
23 reconciliation to assist us in that process. We did an RFP,
24 Your Honor, and approximately ten people submitted interests.

25 We interviewed several of them, and we are about to

1 make a selection with respect to those claims agents. And we
2 think that will greatly facilitate and expedite the process
3 with respect to the non-three categories that I referred to
4 previously.

5 I know that on a prior appearance, Your Honor,
6 Mr. Despins had mentioned about an ADR process for the
7 resolution of those additional claims. We have been working
8 with Paul Hastings and the Creditors' Committee, as well as
9 with AAFAF, to develop a process that will fit into the
10 concept of the plan of adjustment, which will provide for a
11 low discovery, low litigation type of approach. It will allow
12 for offers to be going back and forth, and if, in fact, there
13 is no resolution, an expedited consideration by an appropriate
14 tribunal to consider those claims. But again, Your Honor, we
15 are anticipating that we will include that in the plan of
16 adjustment after approval by all the parties.

17 THE COURT: Thank you.

18 MR. ROSEN: Your Honor, the next item is -- I'll say
19 it with respect to the GDB that you've referred to. Your
20 Honor, as you are aware, this is something that was before the
21 parties pre-hurricane. And, in fact, there have been
22 discussions and, in fact, an RSA had been reached in 2017.

23 It had been subsequently amended or amendments have
24 been entered to extend the period pursuant to which it would
25 be considered. However, based upon the facts and

1 | circumstances, the parties then revisited the issue on the
2 | merits, and they have agreed to additional terms which are
3 | currently being documented.

4 | And Ms. Uhland, who is sitting in the New York
5 | courtroom, will address some of the specifics associated with
6 | the GDB proposal.

7 | THE COURT: Thank you.

8 | Ms. Uhland, would you come to the podium, please?

9 | Oh, I'm sorry. Well, after we talk about --
10 | actually, it makes sense to talk about PREPA before we talk
11 | about GDB, because then the Siemens issue is next after GDB.
12 | So would you speak about PREPA --

13 | MR. ROSEN: I'm actually going to defer to Mr. Haynes
14 | over here, Your Honor, from Greenberg, who will speak to the
15 | specifics of PREPA.

16 | THE COURT: Thank you for your patience, Ms. Uhland.
17 | Mr. Haynes.

18 | MR. HAYNES: Good morning, Your Honor.

19 | THE COURT: Good morning.

20 | MR. HAYNES: Nathan Haynes from Greenberg Traurig for
21 | AAFAF, and it's fiscal agent for PREPA. Your Honor, since our
22 | last update, while there is still much work to be done, PREPA
23 | has made significant progress in its post-hurricane recovery
24 | efforts.

25 | Power has been restored to some 99 percent of the

1 customer base. Generation is at levels that are at 90 percent
2 of those in 2017. 82 percent of the 103 larger transmission
3 lines are now back in service. And as of May, billing has
4 been reestablished to approximately 87 percent of the
5 customers.

6 Your Honor, PREPA also continues to work to secure
7 FEMA financing and to access available insurance proceeds. On
8 the liquidity side, PREPA has a cash balance of 240 million
9 dollars. 150 million of that is current borrowings under the
10 Commonwealth loan.

11 Since the initial February 300 million drawdown on
12 that loan, PREPA has made mandatory repayments of 149 million.
13 The revolving feature of this loan terminates in June, the end
14 of June, and so we expect to draw down that 149 available
15 liquidity in advance of that deadline. Unless the revolver is
16 extended by further government action, any mandatory
17 prepayments after that date will be permanent prepayments on
18 the Commonwealth loan.

19 PREPA's operational cash receipts are currently
20 servicing the majority of its operational expenses. The
21 average weekly collections over the past four weeks has been
22 64 million, which is above budget.

23 Your Honor, PREPA continues to assess its short and
24 medium term liquidity needs. We're actively exploring
25 third-party financing options, and we expect proposals from

1 those parties in the coming weeks. We continue to believe
2 that PREPA has sufficient operating liquidity in the near
3 term, and we don't anticipate seeking additional or
4 replacement financing within the current budget period ending
5 on August 10. And that, Your Honor is the current update of
6 PREPA.

7 THE COURT: Do you have anything to tell us about
8 PREPA's work to strengthen its own emergency response
9 capabilities now that we're going into the hurricane season?
10 Is there anything that we can use in this forum to let the
11 people know as they wonder what the weather is going to do?

12 MR. HAYNES: Well, PREPA -- as a part of its annual
13 processes, PREPA annually prepares for the hurricane season.
14 Those preparations are well under way. We are obviously
15 coordinating with FEMA and the Army Corps of Engineers with
16 respect to the processes that need to be put in place, but
17 PREPA is well on top of the situation. And we are in
18 hurricane season again, and that fact is not lost on
19 management.

20 THE COURT: So I would assume that there is a lot of
21 learning from the experience of last year and it's a different
22 order of magnitude and intensity of preparation?

23 MR. HAYNES: That's correct, Your Honor. And I think
24 also there's the added layer of complexity that we're still
25 fixing things and there's still damage we're fixing and

1 transmission lines we're fixing, so that adds another level of
2 complexity on it. But we feel that that process is in hand
3 and being dealt with appropriately.

4 THE COURT: Thank you.

5 MR. HAYNES: Thank you, Your Honor.

6 THE COURT: And now, Ms. Uhland, will you come to the
7 podium in New York?

8 MS. UHLAND: Thank you, Your Honor. This is Suzzanne
9 Uhland from O'Melveny Myers on behalf of AAFAF.

10 THE COURT: Good morning.

11 MS. UHLAND: As Mr. Rosen noted, the GDB and AAFAF
12 submitted an RSA last May, May 17, for approval to the
13 Oversight Board as a qualifying modification and that was
14 certified. That RSA has the support of approximately 2.6
15 billion in principal amount of claims out of approximately
16 four and a half billion of claims against GDB.

17 That group includes more than 300 on-island
18 bondholders, and an additional 50 on-island credit unions, as
19 well as the ad hoc group of GDB public bondholders, which hold
20 over a billion dollars of bond claims.

21 The GDB restructuring, if you will, really has two
22 parts. First, it has the Title VI components, which were
23 restructuring bond claims, which include both public bonds and
24 certain deposit claims, which are loans under Puerto Rico law.

25 As I'll get to in a minute, the number of deposit

1 claims has been greatly reduced by virtue of the offsetting
2 mechanism that's part of the fourth amendment. That's the
3 Title VI component. In addition, there are claims of public
4 corporations against GDB for their deposits, and those are
5 being resolved through a settlement that is being effected
6 through legislation that's being enacted in Puerto Rico on the
7 GDB restructuring.

8 So first, the qualifying modification in the Title VI
9 process. What the Title VI process provides is that the
10 current bond claims against GDB will be restructured through
11 an exchange where they will receive new bonds of approximately
12 55 percent of the face amount of their old bonds, and these
13 new bonds will be issued by a new entity to be formed under
14 the GDB Restructuring Act. And it's going to be called the
15 GDB Debt Recovery Authority.

16 Separately, the public corporation deposit claims
17 that are being settled through the GDB restructuring act will
18 be issued beneficial interest in a newly formed entity called
19 the Public Entity Trust, and the primary asset of that trust
20 is the net claim of GDB against the Commonwealth. In other
21 words, while the Commonwealth had deposits at GDB, its loans
22 from GDB exceeded the amount of its deposits. So on a net
23 basis, there's a claim against the Commonwealth of about 905
24 million dollars.

25 As noted, the RSA was amended after the hurricanes

1 and really we needed to do two things: First, we had to move
2 out the milestone dates because of the obvious disruption and
3 delay; and second, we wanted to provide some relief to the
4 municipal entities, the municipal depositors.

5 So one of the primary changes to the RSA that was
6 negotiated after the hurricane and is set forth in the fourth
7 amendment is to allow for the full offset of the
8 municipalities' deposits against their loans. This is one
9 reason that there are very few municipality creditors left
10 holding deposit claims in this modification. So there are
11 very few depositors remaining.

12 In order to implement these amendments to the RSA as
13 well and to make some other amendments, the GDB Restructuring
14 Act is currently being modified by the legislature in Puerto
15 Rico and we are awaiting its approval. On May 8th, 2018, the
16 Oversight Board recertified this amended RSA as a qualifying
17 modification under Title VI.

18 So now, where do we go from here? As I said, the
19 public entity settlement is conditioned on the effectiveness
20 of the Title VI, but is being addressed through the
21 legislation. The Title VI itself is moving down the path
22 toward solicitation and court approval.

23 As we set out in the informative motion, we are
24 proposing, GDB and AAFAF are proposing to the other RSA
25 parties that we set forth the following dates for our path

1 forward with the RSA: That we will submit substantially
2 complete drafts of the solicitation documents to the Oversight
3 Board by June 22nd; that we will launch the solicitation on
4 July 5th.

5 This means we will include an offering, an
6 informational document and the ballots will be mailed on July
7 5th. We intend to initiate the Title VI proceeding the day
8 after launch, so -- sorry. We're going to mail July 5th and
9 initiate the Title VI proceeding on July 6. And then provide
10 that the votes come back on August 6.

11 The Court's role in Title VI is to determine whether
12 the requirements of PROMESA 601 have been satisfied, and to
13 focus on three things: One, the pooling and classification,
14 including classification as to whether an unsecured claim is a
15 claim as opposed to a property right; the solicitation and the
16 tabulation.

17 Given that range of sort of a rather narrow focus of
18 the Court, we set out what we think is an appropriate schedule
19 in our informative motion, triggered off of the initiation
20 date of the Title III. And that's again set forth -- our
21 assumption is that from the date that we file and initiate the
22 Title III, we will include a motion to approve the qualifying
23 modification.

24 THE COURT: May I just interrupt you there with two
25 things? As I read your proposed schedule, which doesn't have

1 at this point an outside date for court approval, but your
2 schedule would appear to contemplate the holding of hearings
3 and substantive work toward resolution in the latter part of
4 August, August 20th and forward.

5 The Court is not available for hearings and
6 proceedings between August 24th and Labor Day. So we'll need
7 to deal with that scheduling. That leads me to suggest that
8 we consider whether combining whatever hearing is necessary
9 with the September Omni, which is the week of September 10th,
10 might be an approach that would promote at least some
11 efficiency in terms of people coming together. So I would
12 look for your thoughts on that.

13 The second thing is that as you know, we have with
14 Siemens the issue outstanding, which I'm assuming falls into
15 that category of property versus loan that you were talking
16 about. And I'd be grateful for further explication of your
17 thinking as to whether that assumption is correct, whether you
18 would anticipate building into this process any necessary
19 discovery in anticipation of and adjudication of the loan
20 versus property issue on the basis of Puerto Rico contract,
21 property, banking law, local law, and the extent to which you
22 think there are any other parties that might be making similar
23 types of contentions and where we would put any evidentiary
24 proceedings that might be necessary.

25 MS. UHLAND: So Your Honor, I think with that, with

1 the Court's schedule, we should revise the proposed timetable
2 to -- right now we have what I'll call a 45-day period. And
3 so with the Court's schedule, it would be more like a 60-day
4 period.

5 THE COURT: Yes.

6 MS. UHLAND: 60, 65. So the way we envision the
7 resolution of these issues is similar to an either -- you
8 know, just consider it a contested matter with discovery or a
9 plan -- a confirmation hearing with discovery. So we would
10 like to work in, within that 60-day period, an appropriate,
11 you know, period for discovery, if necessary.

12 What we would like to do, and it is our view, and you
13 are correct, we were looking to resolve any entity that
14 believes that they have a property claim instead of -- a
15 property right instead of a creditor claim, Siemens or any
16 other party that believes they are similarly situated. We
17 would like them to address them in the context we believe
18 that's a classification issue that we believe should be
19 addressed in the context of the resolution of the Title VI.

20 So perhaps with those thoughts in mind and the
21 Court's comments, we can provide -- you know, we can work
22 through now or we can confer with the parties and try to come
23 up with a revised proposed timetable that incorporates some
24 limited discovery on that discrete issue.

25 THE COURT: I think some work offline on a revised

1 proposed timetable would probably be an appropriate and
2 efficient response, although in the next agenda item, it will
3 be important to hear Siemens' conceptual response to this
4 framework that we've talked about.

5 But I think, and I just want to confirm with you,
6 that I hear you saying that you are -- you anticipate real
7 discussions leading to an appropriate structure for discovery
8 that the -- either that the parties agree is necessary or to
9 the extent there is a dispute about that, queuing up something
10 to manage so that a proper discovery process can be managed in
11 advance of the hearing in connection with the Title VI, and
12 that that hearing will include at a minimum a determination as
13 to whether the funds in question can be classified as a loan
14 and therefore be resolved through the Title VI.

15 And I think a corollary to that determination would
16 be what is the precise nature of the rights, if they're not a
17 loan, and that would subsume in your view the issues that have
18 been raised in the adversary as to GDB and that escrow
19 account?

20 MS. UHLAND: Yes. That is all correct, Your Honor.

21 THE COURT: Thank you for clarifying that for me.

22 MS. UHLAND: So with that, Your Honor, unless the
23 Court has any questions, you know, that completes what we
24 wanted to address with the Court today.

25 THE COURT: Thank you. Give me just one moment to

1 look at my notes.

2 That covered all the questions that I had for you.

3 Thank you, Ms. Uhland.

4 MS. UHLAND: Thank you, Your Honor.

5 MR. DESPINS: Your Honor.

6 THE COURT: Yes, Mr. Despins.

7 MR. DESPINS: If the debtors --

8 THE COURT: I need you at a microphone.

9 MR. DESPINS: Thank you, Your Honor.

10 I was asking the question, if the debtors are done
11 with their state of the union report, we just need to address
12 a few points on behalf of the Committee that have been
13 discussed. One of them is to give you a report on the
14 tutorial sessions that we had on the claim process.

15 Remember that you had asked about these tutorial
16 sessions and the proof of claim process. Just, I want to give
17 you a brief report on that. And we -- in Puerto Rico, on the
18 island, they worked very well. We did it in four cities, and
19 they were well attended. Dozens of people showed up. That
20 worked well.

21 On mainland, not so successful. Meaning that we shut
22 it down after the first one because of lack of interest. But
23 I wanted to make sure Your Honor knew that.

24 THE COURT: Thank you for undertaking to make that
25 available.

1 MR. DESPINS: And on COFINA, Your Honor, I just want
2 to spend two seconds on that to set the stage. You will
3 remember that under that stipulation, Commonwealth-COFINA
4 dispute, that on the COFINA side of the house, the way the
5 settlement needs to be implemented is through a plan of
6 reorganization that the Board obviously is the only party that
7 can propose that.

8 So the purpose of the 60 days is to go through not
9 only with the Board, but with a number of people, the COFINA
10 creditors, obviously the Board, and of course the COFINA agent
11 will be centrally involved in that process as well to go over
12 all the execution issues. As you can imagine, you're familiar
13 with -- obviously very familiar with the litigation in the
14 COFINA case --

15 THE COURT: Yes.

16 MR. DESPINS: -- regarding junior, senior
17 acceleration. All of that is something that needs to be
18 addressed by the Board through this process. So we wanted to
19 make sure you knew that.

20 THE COURT: Yes.

21 MR. DESPINS: That's why the 60 days to try to firm
22 up a lot of these issues is necessary. Whether 60 days will
23 be enough or not, we hope so, but we -- I've learned a long
24 time ago in bankruptcy that you always have to underpromise
25 and overdeliver.

1 So there's a lot of work that remains to be done. I
2 want to make sure that the constituents and the Court know
3 that. We are not at the finish line yet.

4 The last point I want to address briefly, Your Honor,
5 is GDB. Just a big yellow light on GDB. I'm not going to
6 argue the points, Your Honor, but the Committee has been in
7 discussion obviously with -- discussion with AAFAF on this.

8 There are several issues as to whether this is a --
9 whether the committee would sign off on this. And one of the
10 concerns is that there are multiple governmental entities
11 involved in this. For example, Ms. Uhland described that the
12 Commonwealth was a depositor at GDB. So was PREPA. And the
13 question is who is deciding all these things. It's a bit
14 reminiscent of the debt refinancing issues where you have one
15 group deciding the issues that affect all these debtors.

16 There are also releases that are sought in this GDB
17 plan or -- not plan, but proceeding, releases for directors
18 and officers. And I don't want to be dramatic about this, but
19 I was reading in the press yesterday that the governor
20 described Puerto Rico in the past as a big Ponzi scheme. Not
21 my quote, his quote. And in that context, we have to be
22 really careful about all of that.

23 And therefore, what I'm saying is timing wise, Your
24 Honor, I don't want to remain silent and Your Honor to think
25 that this will be a very dry procedural matter. It may be.

1 And that's not what we want to do, but it may be that the
2 committee will challenge the use of Title VI for this process,
3 and that's going to be a much broader proceeding than just
4 what was described, Your Honor.

5 So I want to make sure you are aware of that. We
6 don't need to debate that now, but I want to make sure that's
7 on your radar screen.

8 THE COURT: And you say you are directly in
9 discussions with AAFAF about this?

10 MR. DESPINS: Yes.

11 THE COURT: And so I will assume that a revised
12 timing and procedural proposal will reflect, at a minimum, the
13 existence of those issues and appropriate management
14 techniques for the proper consideration of those issues. If
15 Ms. Uhland wants to add anything, I would invite her to come
16 to the podium in New York.

17 And I see she's on her way, so we might as well just
18 have this confirmed here. So stay at the podium please,
19 Mr. Despins.

20 MS. UHLAND: Your Honor, we need to -- I think we
21 need -- we are having discussions with the Creditors'
22 Committee. We would love to have the Creditors' Committee
23 support the GDB Title VI.

24 As a threshold issue, we don't know that the
25 Creditors' Committee, frankly, has standing to get into the

1 Title VI of the GDB. That's something that we do not concede.
2 And so -- but we do want to continue to work with them. We
3 would like their support.

4 As far as a mechanism to resolve the dispute and to
5 reflect their view on the -- their potential objection on the
6 timing of the schedule, what I would propose, Your Honor, is
7 why don't we continue our discussions to obtain their support
8 in the near term. And if we can't do that, then come up with
9 a proposal for, you know, a schedule to resolve our issues in
10 front of this Court.

11 THE COURT: Thank you.

12 MR. DESPINS: Thank you, Your Honor.

13 MR. ROSEN: Your Honor, Brian Rosen again on behalf
14 of the Board. I rise only with respect to the comment about
15 the COFINA-Commonwealth dispute.

16 As I mentioned we, the Board and its advisors, are
17 actively engaged in discussions already with members of the
18 COFINA creditors' body, and we are looking forward to now
19 taking preliminary settlement and moving that towards a plan
20 of adjustment. We do not anticipate waiting until the
21 expiration of the 60 days. We want to use every day that's
22 available to us.

23 THE COURT: I'm glad to hear that.

24 MR. ROSEN: Thank you, Your Honor.

25 THE COURT: Now, did counsel for Siemens wish to

1 speak to the Title VI structure versus Title III issue?

2 MR. SOVEN: Sure. Andrew Soven from Reed Smith for
3 Siemens.

4 Your Honor, it sounds like in the last week since we
5 were before Judge Dein, there may have been a little bit of
6 progress in terms of what's sort of being offered to us in the
7 context of the Title VI, but I still think we're not there
8 yet.

9 I mean, the case was filed in the Title III
10 proceeding. It doesn't seem as if there is a compelling
11 argument that the case cannot be heard in the Title III
12 proceeding. And although they've argued in a Motion to
13 Dismiss that the case belongs in a Title VI proceeding, it
14 would be our preference as of today to have that motion ruled
15 on to see if they're right or we're right, or if the motion is
16 ruled on in such a way so that a decision can't be made on the
17 initial -- you know, on a Rule 12(b)(6) motion.

18 But as it stands now, you know, I heard something
19 about lack of standing for the Creditors' Committee. I heard
20 that there may be an opportunity for discovery and there may
21 be a hearing at some point in the Title VI process, but none
22 of that really has been -- has been put down specifically in
23 the motion to inform or in what I've heard today.

24 So I mean, we're here talking about this Title VI
25 issue because GDB, and to some extent the other parties to the

1 RSA, included Siemens' claim in the RSA, that was a choice
2 that they made, which they're entitled to make, but which
3 we're entitled to disagree with. And I have not heard yet a
4 compelling reason for me as to why our position on that cannot
5 be heard in the Title VI. At the same time -- in the Title
6 III.

7 At the same time, we have every interest, as I told
8 Judge Dein last week and I'm telling you today, in an
9 expeditious resolution no matter where the case is heard. So
10 the schedule we proposed said, you know, briefing would
11 essentially be done in the next two or three weeks, by July
12 25th, by agreement.

13 If the Court wants, it can hear argument. If the
14 Court doesn't want, it can decide the motion. That argument,
15 they are now agreed in principle to some discovery. We put
16 forth in the proposed orders submitted last night what exactly
17 that discovery should be, and it's quite limited. And, you
18 know, under our -- you know, under our argument, the case in
19 the Title III proceeding can be decided 60 days, 90 days,
20 certainly by the end of the summer, if not before, and so that
21 remains our preference.

22 THE COURT: Well, I hear you on that, and I saw that
23 reflected in your filing yesterday afternoon. As you know, I
24 have -- there's one of me, and I have quite a queue of issues
25 that are urgent and/or perceived by their proponents to be

1 urgent, and so a concern that I have always is the most
2 efficient way of resolving an issue.

3 And to the extent anybody wants to jump to the front
4 of the queue, I have to ask myself and them, why should you be
5 in the front of the queue when other people have been waiting
6 for things. I wish I could --

7 MR. SOVEN: Yes.

8 THE COURT: -- decide everything instantly, but I've
9 found that I can't, miraculously enough, and so I have to
10 organize my time properly. And so since the -- there seems to
11 be very real momentum, both procedurally and for business,
12 governmental, restructuring reasons on the Title VI, it
13 certainly sounds to me as though that is very much on a track
14 to happen in the near term and in the time frame in which you
15 would put your aspirational accelerated decision of this issue
16 within the Title III.

17 And Ms. Uhland has recognized the need to provide for
18 a discovery process and for evidentiary proceedings in
19 connection with the issues, has acknowledged that local law
20 will govern the determination of the property and loan issue,
21 which is another concern that you raised in yesterday's
22 filing.

23 My request to you is to engage in very serious and
24 more concrete discussions with AAFAF to come up with a
25 sufficiently comprehensive process to do this within the Title

1 VI rather than trying to have a separate accelerated track for
2 your motion practice in the Title III while we're also queuing
3 up the Title VI.

4 And as I said to Ms. Uhland, late summer is not a
5 time when I can entertain and promise to turn around very
6 quick decisions.

7 MR. SOVEN: Understood. I mean, would Your Honor
8 anticipate that we would meet and confer again, and hopefully
9 maybe with greater success, and then -- what is the process in
10 terms of getting back to the Court?

11 THE COURT: Well, what I spoke about with Ms. Uhland
12 was that she was going to organize the necessary
13 consultations, and then there would be a revised proposal both
14 in terms of timing and in terms of the particulars of
15 proceedings.

16 And so if you are not fully on board with that
17 proposal, I would expect that that would be accompanied by an
18 articulation of the objections that remain.

19 MR. SOVEN: Thank you.

20 THE COURT: Thank you.

21 And so I think procedurally and for housekeeping
22 purposes, since I am directing you to go down this procedural
23 track, I am going to enter an Order denying without prejudice
24 the pending Motion for Expedited Motion Practice on
25 segregation of the money within the Title III. And I will

1 leave it to you and the other parties to the Title III to
2 decide whether you still want to keep to the briefing schedule
3 that was proposed for the motion to dismiss in the Title III,
4 or hold the conclusion of that in abeyance pending the Title
5 VI. That might be a way to save some, you know, money and
6 effort.

7 MR. SOVEN: Just one final point, we had filed a
8 motion to preserve the funds.

9 THE COURT: Yes.

10 MR. SOVEN: And as of last week, essentially what
11 constituted an oral order from Judge Dein about that, or at
12 least confirmation that the funds would have been preserved at
13 least through June 28, because at least as of last week, that
14 was an aspirational date for a resolution, even though that
15 didn't turn out to be realistic. I mean, we would like that
16 extended, I guess, if that's the right word. We would like
17 confirmation that the funds will be preserved and remain
18 intact pending final resolution of Siemens' claims, wherever
19 they're heard.

20 THE COURT: So let me invite Ms. Uhland back to the
21 podium in New York for that.

22 Ms. Uhland, will there continue to be a standstill on
23 disbursements from the GDB and application of GDB funds
24 pending the final resolution of the RSA qualifying
25 modification motion practice?

1 MS. UHLAND: Are we asking -- let me ask, is the
2 position -- I'm not quite understanding what I'm being asked
3 to confirm. Can you repeat that?

4 THE COURT: I heard Siemens' counsel saying that they
5 are concerned that there be a specific undertaking not to
6 divert or otherwise invade the 13 million dollars until the
7 property rights versus loan issue is resolved, particularly if
8 what we're looking at is resolving that in the context of the
9 Title VI. And there had been a specific undertaking before
10 Judge Dein regarding the period from now until June 28. And
11 so he's asking for a comparable undertaking through the
12 conclusion of the -- the resolution of the issue in the
13 context of the Title VI.

14 MS. UHLAND: Why don't we say that it would be the
15 earlier of that date or September 10th, in case there's
16 some -- something goes off the res.

17 THE COURT: All right. Well, why don't you -- that's
18 the proposal, and if you will follow up on that with them in
19 your discussion of mechanisms, and if it's acceptable, include
20 that in the scheduling and mechanism proposal?

21 MS. UHLAND: All right. Will do, Your Honor.

22 THE COURT: Thank you very much.

23 MS. LOPEZ: Your Honor, briefly. Giselle Lopez on
24 behalf of the GDB. I was under the impression that you wanted
25 to discuss the merits of the preservation of funds request,

1 but if you're only discussing calendar and briefing, then we
2 don't have anything to add.

3 THE COURT: I did not expect to hear merits arguments
4 on that motion. And if the parties are content to push it out
5 until September or earlier, preservation of the -- earlier
6 resolution of the RSA, it seems to me it's not necessary.

7 MS. LOPEZ: Right. That's what we wanted to make
8 clear. Thank you.

9 THE COURT: Thank you very much.

10 All right. The next item on the agenda is the report
11 of the fee examiner.

12 MS. STADLER: Judge, as you mentioned -- oh, I'm
13 Katherine Stadler of Godfrey & Kahn on behalf of the fee
14 examiner, Brady Williamson.

15 THE COURT: Good morning, Ms. Stadler.

16 MS. STADLER: Good morning. As you know, we filed a
17 status report on the second interim fee applications covering
18 the period from October 2017 through January 2018.

19 There has been some progress since the filing of that
20 report about a week ago. We are in productive talks with
21 counsel for the Board regarding resolution of issues
22 identified in their first interim fee application, and we have
23 a meeting scheduled next week with some of the applicants for
24 the second interim fee period that have been held over for
25 consideration at a later date. So those are new developments.

1 I wanted to make a couple of notes. On the
2 confidentiality issue, we have continued to have a number of
3 firms express concern that materials they submit to the fee
4 examiner are not protected. In other words, that they could
5 be charged with violating mediation confidentiality by
6 submitting the materials in an unredacted form to the fee
7 examiner.

8 The fee examiner has taken the position that the
9 existing Orders prevent any kind of violation of mediation
10 confidentiality through the submission of materials to the fee
11 examiner, and that issue is continuing to be discussed among
12 the fee examiner and some of the applicants.

13 There have been no objections filed to the fee
14 applications recommended for approval today. We filed and
15 submitted to chambers yesterday an Order that incorporates the
16 recommendations of the report. That Order has been circulated
17 to all of the professionals and I am aware of no objections to
18 its entry.

19 The fee examiner would like to say a few words when
20 I'm finished, but I'm prepared to answer any questions you
21 have about the report or the fee process.

22 THE COURT: Well, the questions that I have go to the
23 chronic concerns and cost containment issues that are flagged
24 in the fee examiner's report, which includes a component
25 anticipating a potential application by motion for specific

1 cost containment measure requirements.

2 I would like to hear a bit more about those potential
3 measures and the thinking at this point. And there are some
4 additional potential measures that the Court would like to
5 have considered for possible formal proposal in that context,
6 because, as the report notes and as I've previously noted here
7 in open court, the careful use of resources is required as we
8 work through these unprecedented and highly complex problems.

9 And I've made some specific instructions to avoid
10 duplication on the record and to avoid overstaffing and
11 overattendance. And I see in hearings that the attendance
12 issues have been taken to heart, to an extent, and that I
13 appreciate the current combined fees accrued so far I think do
14 warrant additional comment, and also the consideration of
15 compulsory cost control measures.

16 So are you the right person for me to have that
17 discussion with or is it Mr. Williamson?

18 MS. STADLER: I think I can talk about them, and he
19 may have a few general concepts to address in that regard.

20 Your Honor, you're referring to the bullet point
21 items on pages 15 and 16 of the report?

22 THE COURT: Yes.

23 MS. STADLER: So those recommendations, and as you
24 know, backing up to the March 7th hearing and the reporting
25 cycle that led up to that, we had a couple of -- the fee

1 examiner had a couple of observations about the efficiency of
2 the process that he sort of previewed for the Court on March
3 7th, and then subsequently embodied in a motion to amend the
4 fee examiner Order which is now pending.

5 I would characterize that motion as cleanup and
6 perfection -- perfection to the extent that's possible of the
7 fee examiner Order now that we have had a chance to see how
8 the process plays out.

9 These measures that are suggested here in the report
10 on pages 15 and 16 are similarly suggestions, concepts, ideas
11 that the fee examiner would like to vet with the professionals
12 and continue to discuss. I'm sure he would be happy to have
13 the Court's insight on any of them and any other measures that
14 the Court deems appropriate.

15 But this was in no -- by no means an attempt by the
16 fee examiner to start dictating new blanket -- or requirements
17 that were non-waivable or couldn't be -- you know, exceptions
18 could not be approved. But he thinks that a couple of these
19 things have the potential for real cost savings, and to create
20 more incentives for the kind of conservative staffing measures
21 that he is hoping to see.

22 The intervention requirement, again, the concern
23 there, and Mr. Williamson, I'm sure, would be happy to discuss
24 it in a little more detail, but the concern there is
25 especially with the potential for another Creditors' Committee

1 or Retiree Committee for the PROMESA retirees -- I'm sorry,
2 for the PREPA retirees, the proliferation of interventions
3 chiming in, we agree, joining, and a concern that there is not
4 enough effort being made to consolidate arguments where that
5 is appropriate and allow parties who have similar positions on
6 issues to submit materials together, rather than each
7 individually having to submit their own unique perspective on
8 every single issue, that is a place where the fee examiner
9 thinks that there's a potential for cost savings.

10 The holdback suggestion, and I know this is a cause
11 for concern for a lot of professionals, so I want to soothe
12 everyone's concerns by saying this is a proposal that the fee
13 examiner has made primarily because he wants to make sure that
14 professionals are all filing interim fee applications, more or
15 less at the same time.

16 The reason for that is, speaking directly to the
17 issue of duplication and overlap, if the fee examiner is
18 looking at a specific case or issue or briefing cycle and
19 trying to determine if there was duplication and overlap in a
20 given fee period, it is very hard to do that without knowing
21 what everyone has charged for that particular activity or
22 brief or argument. And so we really want to encourage people
23 to file their fee applications timely and keep up with the
24 schedule that's set forth in the Interim Compensation Order.
25 Because if that doesn't happen, we end up with issues that

1 have to be set over or deferred or kicked down the road. And
2 then you have, you know, a period of time where more
3 problematic billing behaviors can occur in the interim.

4 So we want to make sure to get the application filed,
5 identify the issues, raise them with the professionals, and
6 come to an understanding about how those issues will be
7 handled going forward so we don't end up with a backlog of
8 unresolved issues that are worse than if we had addressed them
9 as they arose.

10 THE COURT: So I understand that that is the goal.
11 And just for clarity for me on the mechanics, if such a
12 structure were put in place and a professional was
13 substantially in violation of the deadline set for submission
14 of the interim fee application, then for the following period,
15 the holdback would jump up to 20, 30, 40, 50, whatever the
16 percentage until the next submission is made timely, and then
17 can be trued up in connection with the following period?

18 MS. STADLER: That sounds reasonable to me, but
19 again, I think I'm hearing a lot of grumbling.

20 THE COURT: I'm just trying to ask how you're
21 thinking that would work.

22 MS. STADLER: Yeah, something like that I think.

23 One thing I do want to mention, because I know people
24 in the room are very concerned about it, there have been a
25 number of professionals that have appealed to the fee examiner

1 counsel for assistance in facilitating payments.

2 And there are many professionals who are concerned
3 that notwithstanding the existence of the Interim
4 Compensation Order, notwithstanding the existence of the fee
5 examiner's reports and recommendations, that the Court's
6 Orders with respect to payment of fees on a interim basis,
7 either under the monthly compensation procedures or the
8 interim compensation procedures, are not being strictly
9 followed.

10 I want to reiterate to the professionals and for the
11 Court that the fee examiner does not view it as his role to
12 step into the payment queue issue, and that unless there is
13 some instruction from the Court to the contrary, his
14 involvement will end when the recommendations are made to the
15 Court and the Court has approved them through entry of a
16 Compensation Order.

17 And issues with regard to who is being paid what, at
18 what percentage, are going to have to be dealt with as an
19 administrative matter outside the fee examiner process,
20 because we simply don't have access to the records and
21 information necessary to determine or verify who has been paid
22 and who has not been paid.

23 THE COURT: And as I recall, it's monthly payments
24 subject to a holdback that is then tied to these quarterly
25 interim --

1 MS. STADLER: Correct.

2 THE COURT: -- compensation determinations?

3 MS. STADLER: Correct.

4 THE COURT: So, I am not asking the fee examiner to
5 get involved in those cash flow issues. However, to the
6 extent there are cash flow or payment issues that then
7 complicate the fee examiner's efforts to streamline the fee
8 examiner's processes with professionals and in providing input
9 to the Court, there has to be some direct and frank discussion
10 and work as between the payor entities and the professionals.

11 And I will say here that I would hope that I don't
12 have to see any applications about compliance with the
13 specifics of the payment provisions of the Orders in order to
14 clear those sorts of complicating issues off the table, but if
15 that's necessary, the entities and professionals involved on
16 either side are going to have to, you know, come up with an
17 appropriate application to put the issue before me. I'll hear
18 it if I have to. I encourage you not to make me have to hear
19 that.

20 MS. STADLER: Thank you.

21 The last bullet point item that I might address
22 briefly was the limit on individual attendance at events and
23 also case monitoring. We understand from ongoing discussions
24 with counsel for the Board and AAFAF and other interested
25 parties that there has been a concerted effort made since the

1 issuance of the first interim report to consolidate the
2 process of reviewing the voluminous docket on a daily basis,
3 digesting what's in there and disseminating information to the
4 necessary parties.

5 Because the fees we reviewed for this cycle ended in
6 January, we haven't had the benefit of seeing the results of
7 that effort, but we understand that it has been undertaken in
8 earnest, and are pleased to see that the docket monitoring
9 concern that was raised appears to be being addressed.

10 As for the hearing and mediation attendance, and
11 perhaps today's or yesterday's announcement means there is
12 less mediation attendance in the future that we will have to
13 worry about, but the attendance at hearings continues to be an
14 issue.

15 And the fee examiner has stated standards and
16 guidelines that are in the memoranda that he has issued to the
17 professionals and filed with the Court, and has continued to
18 apply those standards with some flexibility in recognizing
19 that there are always unique circumstances that come up and
20 there are always situations where a person's attendance at a
21 particular event or a person's participation in briefing or a
22 hearing may be justified even if it doesn't rigidly adhere to
23 a pre-established guideline.

24 So whether there are standards that are articulated
25 and enforced or monitored by the fee examiner or the Court,

1 the fee examiner would always understand that there is going
2 to be a case-by-case analysis of every single billing issue
3 that arises. And that he would not endeavor to enforce or
4 apply any kind of standards or restrictions or cost-control
5 measures without regard to the realities of this very complex
6 case.

7 THE COURT: Thank you.

8 And so to that, let me just air some ideas that I had
9 on my side along these lines. And again, as you'll hear from
10 the way I'll try to articulate them, they're intended to have
11 some aspects of flexibility, and they also relate to the
12 issues that have been raised by the fee examiner.

13 And so, for instance, as to attendance, I understand
14 that there are principles in the guidelines and in the
15 memoranda that if we were going to take it up a notch, perhaps
16 we can look at it as a presumptive restriction on the number
17 of individuals expected and permitted to attend particular
18 types of activities. And then to the extent any invoices
19 reflect billing above the presumptive limit, the billing
20 entity should provide a confidential submission to the fee
21 examiner with a specific justification for the overattendance.

22 Along the same lines, with respect to duplication of
23 briefing, that -- to impose a requirement that parties
24 expecting to take identical or substantially similar positions
25 on motion practice collaborate in advance of the submission of

1 papers and file joint pleadings with short supplemental
2 filings as necessary. To the extent that parties determine
3 that they nonetheless have a need to file separate, full
4 pleadings, they certify that they did confer in advance and,
5 in connection with the billings, submit a confidential,
6 written justification to the fee examiner with the separate
7 pleadings. And that can inform the fee examiner's
8 recommendations and communications to me, but let the party be
9 more candid with the fee examiner than the party could be with
10 me.

11 One thing that I'm aware of generally in the market
12 is that on electronic research, my understanding is that many,
13 if not most, firms have flat fee contracts with providers.
14 And I understand that there is substantial billing for
15 electronic research services.

16 And so one potential measure that has occurred to me
17 is requiring disclosure to the fee examiner where there is a
18 flat fee contract and having some presumptive limit of billing
19 for the electronic research to a specified percentage of the
20 monthly flat cost, perhaps capped at a calculable,
21 demonstrable, actual proportion of the costs incurred by the
22 firm. So that if, for silly numbers, if the presumptive limit
23 were one one-thousandth of the monthly flat fee, but it turns
24 out that in actuality 20 percent of the traffic was
25 attributable to this matter, and that could be demonstrated by

1 a showing of research hours or whatever, that information
2 could be provided to the fee examiner.

3 And I understand that you're having discussions about
4 receipts as well and whether there's a de minimis threshold
5 below which the receipt concern is not heightened, but you're
6 talking about a concrete threshold at which the concern does
7 get heightened. And so perhaps increasing the transaction
8 costs of not coming with a receipt might be an incentive to
9 coming with a receipt.

10 So those are the additional concerns that I have had.
11 And so what I would encourage the fee examiner to continue to
12 do is to have the discussions informally, but to also consider
13 formulating a motion after those discussions with specific
14 proposals that would then be subject to filing on the record
15 with a full process for objections, and reply. And then the
16 Court would consider changes.

17 MS. STADLER: Yes, we will do so.

18 THE COURT: Thank you.

19 And so with that, I grant the motion for approval of
20 the recommended adjusted amounts and deferral of the
21 applications that are identified in the Proposed Order as
22 deferred. And I will enter that Order.

23 MS. STADLER: Thank you, Your Honor.

24 THE COURT: Thank you, Ms. Stadler.

25 MS. STADLER: Mr. Williamson will speak.

1 THE COURT: Yes. Good morning, Mr. Williamson.

2 MR. WILLIAMSON: Good morning, Your Honor. I will be
3 brief. Let me start first with the four specifics the Court
4 just mentioned. And I think it's important to note that in
5 each of those, including the electronic research, presumptive
6 attendance and the others the Court mentioned, they've already
7 been long part of the dialogue with the professionals. And I
8 think the question which we'll continue to discuss is whether
9 those should be more formalized.

10 But I think the Court's perception on overattendance
11 and duplication has been well communicated, and more important
12 than whatever we say in our report is what's said from the
13 bench.

14 THE COURT: So may I just add one thing that I forgot
15 to add when I went through those measures? Another part of my
16 thinking is that to the extent -- if and to the extent that we
17 do impose some specific measures, it would be helpful to the
18 Court, and I think also to the assembled, if the fee examiner
19 could do a demonstrative look back for information purposes at
20 a preceding period or periods to determine the order of
21 magnitude of difference that the measures would have made had
22 they been in place during, say, the first or second period, so
23 that can provide additional information and an incentive going
24 forward.

25 MR. WILLIAMSON: Thank you, Your Honor. And

1 actually, on that point, to be quite specific, we noted with
2 respect to electronic research, which can get into six
3 figures, that the amount done dropped precipitously from the
4 first period to the second period. We all know how novel many
5 of the issues are, but with all respect to our colleagues at
6 Lexis and West and all those services, at some point learning
7 that there is no precedent stops. And it's clear there is no
8 precedent for much.

9 So, Your Honor, we've been at this for two fee
10 periods, eight months, of more than 30 professionals. And
11 while the nature of this process tends to focus on problems,
12 there really is much to be encouraged about.

13 And foremost I think is the cooperation and
14 consultation between our review process and the professionals'
15 willingness and openness to hear a different point of view, to
16 answer hard questions, sometimes to persuade us that the
17 services rendered were not only reasonable and necessary but
18 essential to making this process work.

19 So as a result, I hope the report embodied a couple
20 concepts. One is that what we do is as much about prospective
21 practices as retrospective practices. In other words, it's
22 imperfect. We can always get better. And we don't want to
23 simply dwell on the past without applying those lessons
24 prospectively, in which we all hope will be a brief case, but
25 may end up not being a brief case.

1 The other conceptual point Ms. Stadler and I wanted
2 to drive home I think this morning is that the comments from
3 the bench and the comments on our report are as much directed
4 at the clients as the counsel because ultimately counsel makes
5 suggestions, executes decisions, but ultimately the client
6 makes decisions about intervention, about separate briefs,
7 about cooperative behavior among the professionals.

8 Another note, if the Court looks at Exhibit A, it
9 will see in the very first line that there's an expense
10 adjustment for \$7.86. And the question may arise, why bother
11 with \$7.86? And the facile answer is because the rules
12 require it. And that's true. But I think the broader answer,
13 which goes to the review process generally, is that expenses
14 are a tree in a forest. Duplicate attendance are trees in a
15 forest. And our focus has to be both on the trees and the
16 forest. And again, that's why we're looking at broader
17 concepts, like making the process more efficient.

18 I'll end on this point. I think we've had more than
19 a dozen meetings with professionals. As Ms. Stadler said, we
20 have at least one scheduled for next week. I think we know
21 enough about the process to say that it is working, that it
22 could work better, and will, but we don't see significant
23 changes going forward.

24 The bullet point recommendations we made, like those
25 we made in the first report, were really a trial balloon. And

1 we've gotten a response from the professionals and now from
2 the Court, and if and when those should ripen into a motion,
3 we will file it as we have done.

4 So thank you for your attention.

5 THE COURT: Thank you very much, Mr. Williamson, and
6 thank you for your work.

7 And thank you, Ms. Stadler, as well.

8 And so the next item is the fee examiner's motion to
9 amend the Order with respect to flat fee arrangements and
10 certain other types of billing. We've got 20 minutes
11 allocated on the calendar for that. I will have some
12 questions and I'll be up front about my having some concerns
13 about that proposal. And so there will be a need for
14 discussion.

15 Does anybody who's going to be involved in that
16 discussion want me to take the break now? It's almost eleven
17 o'clock. I can take a five-minute break if people would like
18 that before we go on to the next item?

19 I see no pleading for a break, so let's go on to the
20 next item.

21 MS. STADLER: Thank you, Judge.

22 THE COURT: Hello, Ms. Stadler.

23 MS. STADLER: Hello again. As Your Honor just
24 alluded to, as a result of some of the observations made in
25 the first interim reporting cycle, the fee examiner saw fit to

1 consider changes to the Order appointing him to address
2 inefficiencies in the process that he perceived as a result of
3 that first round.

4 They primarily fall into three categories: There was
5 the issue of work performed prior to formal retention. As you
6 know, in Chapter 11, professionals have a retention order and
7 their work starts as of the date of their retention, whether
8 it's concurrent or retrospective. And there is a specific
9 start date to when billing may begin.

10 PROMESA, as you know, did not incorporate the
11 retention requirements, at least as for state professionals,
12 of the Bankruptcy Code. And so we have a situation where some
13 professionals started billing on the petition date or on the
14 date of their formation in terms of the committee or
15 appointment. But other professionals, and particularly those
16 working for the COFINA agent, began their work before the
17 Court formally appointed them.

18 And the fee examiner flagged that issue for the
19 Court, and then made this motion to clarify that he would go
20 ahead and review those pre-retention and pre-appointment fees
21 and make recommendations on them. He has done that in his
22 second interim report. That's not an issue that's expected to
23 reoccur, so I would characterize that as sort of a
24 housekeeping item.

25 THE COURT: And I don't have an issue with that, and

1 | there have been no objections filed to that.

2 | MS. STADLER: Right.

3 | A little bit more broadly speaking, there is an issue
4 | of Title III versus non-Title III work. A really good example
5 | of this is not in our motion, because we just learned about it
6 | in talking to one of the professionals about the second
7 | interim fee applications. But one professional is very
8 | engaged in the recovery effort with respect to utilities and
9 | working with FEMA and seeking to get expenses reimbursed by
10 | FEMA, and there is a very fuzzy line between where this
11 | professional's Title III work ends and where the recovery
12 | effort begins, or the privatization plan effort begins. And
13 | that's true for a lot of these professionals. They're working
14 | on matters that are in Title III and outside.

15 | Ms. Uhland, for example, just gave a presentation
16 | about the GDB, and one could argue that portions of the
17 | colloquy were Title III and portions of the colloquy were not
18 | Title III. And the fee examiner has concluded that rather
19 | than attempt to arbitrarily determine after the fact what is
20 | or what is not a Title III service, and to carefully avoid
21 | making any evaluation of non-Title III services, that he would
22 | instruct his counsel to review and report on applications for
23 | compensation that are filed in the Title III.

24 | So, for example, Ms. Uhland's bill for today's
25 | hearing will reflect her attendance and the discussion about

1 Title III and Title VI, but the bill presumably will come to
2 the fee examiner. And the fee examiner will review that bill
3 without regard to whether those fees technically belong in one
4 bucket or the other.

5 And so this Order also just clarifies that the fee
6 examiner will have the authority and obligation to review and
7 report on any fee applications filed in the Title III,
8 regardless of whether the work performed was in the Title III.
9 That's sort of just a practical revision, and I also have
10 heard no real objection to that from any of the parties.

11 THE COURT: And that seems, to me, salutary as well
12 and practical.

13 MS. STADLER: Thank you.

14 The final issue that is addressed by the motion is
15 the issue of de minimis professionals. We learned through --

16 THE COURT: And McKinsey, which is not de minimis.

17 MS. STADLER: And McKinsey.

18 THE COURT: Not at all.

19 MS. STADLER: Right. Right. So McKinsey is not de
20 minimis by any means. But as you know, the fee examiner and
21 McKinsey sort of reached an impasse in the discussions about
22 the fee -- first interim fee period because the standards that
23 PROMESA borrows from the Bankruptcy Code with respect to
24 reasonableness and necessity hinge on an evaluation of the
25 time spent and services provided.

1 And the contract that McKinsey has with the Oversight
2 Board simply does not lend itself to that type of analysis.
3 So the fee examiner, after many discussions with the Board
4 professionals, with McKinsey and others, concluded that it
5 made the most sense to place the obligation for verifying
6 reasonableness and necessity of that particular professional's
7 services on the party most familiar with those services, which
8 would be the Board.

9 The mechanics of how that review and recommendation
10 and reporting process would work are obviously still open for
11 discussion. There are no specifics about that in the Order --

12 THE COURT: I noticed --

13 MS. STADLER: -- other than to say that particular
14 professional does not fit in the fee examiner process as it's
15 complicated in the Orders creating it or in PROMESA, and we
16 have to deal with that.

17 THE COURT: And so I will take that as an opening of
18 the discussion on this topic. And I understand the dilemma
19 that's presented, but the standards to which the fee examiner
20 is seeking to work -- the PROMESA standards -- are the same
21 standards that would apply to the Court.

22 And so it is not obvious to me that kicking this
23 problem to me that has come to an impasse in consultations
24 without some further structural changes in what's submitted
25 will enhance at all my ability to make the determinations that

1 I would have to make ultimately under 316 and 317.

2 And so it certainly seems to me that some, you know,
3 input from the Oversight Board as to the reasonableness and
4 necessity of the services provided is essential, because
5 they're there on the ground. But I can't simply delegate to
6 the Oversight Board the responsibility and authority to
7 approve McKinsey's flat fee arrangements.

8 And as you've noted, Section 328 is not incorporated
9 into PROMESA. And so we have 316 and 317 which, even viewed
10 conceptually as opposed to a specific exclusive list of
11 factors, contemplates some metrics, some qualitative and
12 quantitative benchmarks.

13 And so to cut to the chase, what I want to see is a
14 process that still has the fee examiner involved, evaluating
15 on the basis of the fee examiner's wisdom, experience, and
16 contextual knowledge of all of the other professional, similar
17 professional work that is being done.

18 Meaningful input to the fee examiner in the first
19 instance by the Oversight Board and the development of
20 metrics, which don't necessarily have to go to 10th of an hour
21 timekeeping by McKinsey, but some metrics to be proffered in
22 supplemental data submissions by McKinsey that could go to
23 numbers of people involved in projects, in some sort of
24 meaningful numbers, the amount of time spent on particular
25 projects during particular periods, identifying deliverables.

1 There are various ways to get there so that the fee
2 examiner would have some benchmarks for evaluation and be able
3 to make some sort of recommendation to the Court on McKinsey's
4 flat fee application or anyone else's flat fee application.

5 Because otherwise I would be sitting in the dark with
6 the choice of deferring to the party that hired and signed
7 that contract in the first place, which obviously has, you
8 know, an appropriately built-in interest in saying that
9 everything's come out fine, but that's not sufficient from my
10 perspective.

11 MS. STADLER: Your Honor, I think that that makes a
12 lot of sense. And obviously in our discussions with the
13 professional, we didn't just throw up our hands and say, let's
14 let the Judge deal with this. We had a long series of
15 discussions.

16 As you know, the Board itself has its own fee
17 examiner, Bob Keech, who is reviewing all of the Board
18 professionals bills, whether or not Title III. And we spoke
19 to him about this issue, and he had reached a similar
20 conclusion, that there is just no way given the tools we have
21 and the information provided that we can provide the kind of
22 recommendation or assurance to the Court that these 316 and
23 317 requirements are met.

24 THE COURT: And so that's where I come in with my
25 ability to sign under the words "so ordered".

1 MS. STADLER: Right.

2 THE COURT: I can change the game. And it seems to
3 me I need to change the game.

4 MS. STADLER: I wouldn't disagree with that. If
5 we're to do our job the way we have done it with respect to
6 other professionals, I think that that's true. And that also
7 applies then to the de minimis category, although much less
8 significantly in terms of financial impact. The attempt with
9 this proposal was to sort of co-opt the notion of ordinary
10 course professionals that exist in Chapter 11 cases.

11 Most Chapter 11 cases of significant size have
12 ordinary course orders that have specific procedures about
13 thresholds beneath which formal retention and formal fee
14 application are not required. And during the first round of
15 reporting, we noted that there were a number of professionals,
16 some of them, you know, with modest, in this case anyway, flat
17 fees on a monthly basis, and others that simply were working
18 on such small and discrete matters that the fee examiner
19 concluded that his review and comment on them didn't make
20 sense in cost benefit analysis.

21 And so we floated the idea and discussed it with the
22 various interested parties and came up with a proposal in the
23 Order, but obviously are open to the Court's or any other
24 party's insight as to how to put a finer point on that.

25 The goal there is, again, not to kick the burden to

1 someone else, but merely to be cognizant of the fact that this
2 process also has a cost, and that for certain types of
3 professionals, flat fee being primarily among them, there's
4 not a lot of value a detailed fee review process can add. So
5 that's the thinking behind that particular proposal.

6 THE COURT: And I hear that. I think that the
7 comments and structure that I suggest to be worked out in
8 connection with the large flat fee provider could also be
9 created in a proportionally appropriate way with respect to
10 smaller flat fee providers.

11 And as to de minimis non-flat-fee providers, I
12 honestly still don't want as a practical matter, given my very
13 limited resources on which there are many, many demands, to
14 have to devote my staff time to detailed review of billing
15 statements. And to find the 10,000 dollar ones, and then look
16 at time and charges on those to be able to formulate a
17 recommendation for me, that's just not an efficient process in
18 my chambers.

19 And so perhaps, if you can develop something that's
20 almost, you know, algorithmic in its specificity for a -- I
21 don't want to call it a safe harbor, but some sort of a
22 template that small claims should fit that would make review
23 easy and, you know, able to sort of slot into your process,
24 that's something that I would prefer to a structure in which I
25 have to figure that out. And also, you know, I just don't

1 have the ability to have that back and forth conversation with
2 the providers either.

3 MS. STADLER: Yes. We can certainly do that and have
4 done that in other engagements. So we'll work on that again
5 in consultation with the professionals.

6 THE COURT: Thank you. I appreciate your candor and
7 your willingness to work with me, as well as with the
8 professionals, in finding ways to get me in a position to make
9 the appropriate determinations. And so I think that does --
10 does that cover all of the categories?

11 MS. STADLER: I think so. Judge, do you want us to
12 submit a Proposed Order addressing the two issues that we had
13 agreed upon? That is, the pre-appointment fees and the
14 non-Title III fees, and leave the other issues for a separate
15 Order to be negotiated and discussed?

16 THE COURT: Yes.

17 MS. STADLER: Okay.

18 THE COURT: That would be very helpful.

19 And so to be clear, the application is granted as to
20 work performed prior to formal retention, and as to review by
21 the fee examiner of all applications submitted in the Title
22 III, even to the extent that they cover certain non-Title III
23 matters.

24 The motion is denied as to flat fee -- as to
25 relieving the fee examiner of responsibility in connection

1 with flat fee and de minimis billing, with the expectation
2 that there will be a proposal for a structure to cover those
3 sorts of billings.

4 MS. STADLER: Understood. We will submit a revised
5 Order.

6 THE COURT: Thank you very much, Ms. Stadler.

7 MS. STADLER: Thank you.

8 THE COURT: All right. And so the next item on the
9 agenda is Roman III(3), PREPA's Motion for Entry of a Bridge
10 Order and Extension of Removal Period.

11 Mr. Haynes.

12 MR. HAYNES: Hello again, Your Honor. Nathan Haynes
13 from Greenberg Traurig for AAFAF, as fiscal agent for PREPA.

14 Your Honor, this is actually the Oversight Board's
15 motion, but I'll be speaking in support of it briefly today.
16 This is the third motion to enlarge the time frame for removal
17 of civil actions. Your Honor, it's uncontested, but I did
18 want to take a moment to point out that we are asking for
19 relief that's a little bit different than the previous ones,
20 and I just want to make sure that the Court had the
21 opportunity to focus on that.

22 We're asking to extend through the confirmation of a
23 plan of adjustment at this time. Given, just as a practical
24 matter, given PREPA's limited resources and the multiple
25 various work streams that PREPA's personnel are burdened with

1 on a daily basis, including current operations, the recovery,
2 the liquidity issues, the transformation plan, the day-to-day
3 issues in this bankruptcy or this restructuring case, we think
4 it makes sense to just move it to the end of the case so we
5 don't have to keep coming back to Your Honor.

6 Parties to these lawsuits have the ability to confer
7 with us to seek relief from the automatic stay where they
8 think appropriate, and we can make determinations at that
9 time. And we have removed certain of the larger cases that
10 we've identified already to this Court.

11 So all by way of saying, Your Honor, we think it
12 makes sense to move it to the end of the case at this time.
13 If Your Honor is not inclined to do that, we'd ask for 180
14 days.

15 THE COURT: At this point, I'm not inclined to move
16 it all to the end of the case. And I think that the
17 suggestion of 180 days, which translates into November, would
18 be an appropriate time for an update and consideration perhaps
19 at that point of a more open-ended extension to the end of the
20 case.

21 What I would suggest, so that we can avoid the
22 necessity of a Bridge Order, would be an extension through
23 November 30th, with an Order providing for the ability to make
24 a further -- an application for a further extension that's
25 cued up in accordance with the CMO timetable for matters for

1 the November Omni. And so then that should avoid the need to
2 have a Bridge Order from an expiry date to the Omni, since the
3 Order that we'd enter now would cover through the end of
4 November.

5 MR. HAYES: Very well, Your Honor.

6 THE COURT: So would you mind presenting a revised
7 proposed order to that effect?

8 MR. HAYNES: Very well, Your Honor. Thank you.

9 THE COURT: Thank you very much.

10 And the next item is the motion of the Retiree
11 Committee for formation of a committee for PREPA. That is
12 item IV.1. on the agenda.

13 Good afternoon.

14 MR. GORDON: Good morning, Your Honor.

15 THE COURT: Or morning.

16 MR. GORDON: No problem. We're close to the
17 afternoon.

18 THE COURT: It's been a long morning.

19 MR. GORDON: It has so far. Exciting, but still
20 long.

21 For the record, Robert Gordon of Jenner & Block on
22 behalf of the Official Committee of Retired Employees of the
23 Commonwealth of Puerto Rico.

24 Your Honor, we have before you today a motion seeking
25 the appointment of a committee, or to at least address issues

1 of adequate representation of retirees in the Title III case
2 of the Puerto Rico Electric Power Authority.

3 Your Honor, the Retiree Committee filed this motion
4 for two basic reasons. First, it certainly appeared to our
5 committee that the PREPA retirees needed to have or do need to
6 have representation, and that we needed to -- that we needed
7 to ensure that they have proper and adequate representation at
8 this point in the case.

9 This was driven in part by the fact that there are
10 approximately 18,500 participants in the PREPA retirement
11 system, of which there are 10,000, roughly 10,000 retirees.
12 The certified fiscal plan for PREPA certified in April
13 indicates that the retirement system is woefully underfunded.
14 It indicates an underfunding liability of 3.6 billion dollars,
15 which is based -- that calculation is based upon, among other
16 things, an assumption as to the return on investment of the
17 assets at 8.25 percent, which is conceded in the certified
18 plan as being robust or optimistic.

19 THE COURT: Yes.

20 MR. GORDON: So if that assumption was modified, the
21 underfunding liability could be significantly higher. That
22 toggle is very sensitive because you're essentially
23 discounting the net present value liabilities over a 40 year
24 time frame, so those liabilities could be significantly
25 higher.

1 The certified plan also indicates, Your Honor, that
2 it contemplates a ten percent cut in accrued pension benefits.
3 That is explicitly stated. And the certified plan also
4 contemplates privatization of various assets which certainly
5 could create complex issues at the plan stage as to
6 feasibility and the like.

7 So for all those reasons, we felt that an official
8 committee for the retirees made sense because we did not know,
9 and we still do not know, whether there is adequate
10 representation of those retirees at this point, which is
11 really the ultimate issue for this Court to determine, which
12 leads to the second reason why we filed the motion.

13 There seemed to be some confusion, and maybe it still
14 exists, as to whether the existing Official Retiree Committee
15 is the representative of the PREPA retirees.

16 THE COURT: From the U.S. Trustee's submission, it
17 seemed to me that the U.S. Trustee was saying that the U.S.
18 Trustee had decided not to appoint a retiree committee for
19 PREPA, which to me said from the U.S. Trustee's perspective,
20 it's not part of the current committee at this juncture.

21 Do you have a different understanding of their
22 positions?

23 MR. GORDON: No, Your Honor. Actually, our view is
24 absolutely the same as that. There were indications, though,
25 at one point from various parties, inquiries from certain --

1 THE COURT: Would you hold on one moment?

2 Did we lose the party? Oh, someone just disconnected
3 on the phone. We can continue.

4 MR. GORDON: All right. Our view is consistent with
5 what has now been articulated by the U.S. Trustee's office,
6 but there were indications at other points in time and
7 inquiries from some PREPA retirees at our website as to
8 whether we were representing the PREPA retirees.

9 So we felt that clarity was very important, and we do
10 agree that it is our view that at that point we did not
11 represent PREPA retirees. There was no appointment entered in
12 the PREPA case appointing our committee to represent those
13 retirees.

14 And you can contrast that, by the way, with what the
15 U.S. Trustee's office did for the Unsecured Creditors'
16 Committee where they specifically stated that the Unsecured
17 Creditors' Committee would be serving as the official
18 committee for the unsecured creditors in the PREPA case, as
19 well as the Commonwealth case.

20 So when you contrast that, it seemed very clear that
21 we were not the representatives. So another reason why we
22 wanted to file the motion was to provide clarity on this
23 issue.

24 THE COURT: And based on the discussions that you
25 have had with the U.S. Trustee, do you have any insight into

1 their reasoning in not appointing the Committee?

2 MR. GORDON: Your Honor, no, I'm not sure I do know
3 the reasons why they have not. I think I will defer to them
4 to explain that. I'm not exactly sure.

5 THE COURT: All right.

6 MR. GORDON: Okay. Thank you.

7 We did indicate, of course, in our pleadings that
8 while the thrust of our motion was simply to alert the Court
9 of our concern that someone or some committee should be
10 perhaps representing the retirees at PREPA, we also did point
11 out that should the Court determine that a committee should be
12 appointed, that our committee stood ready, willing, and able
13 to serve in that role, if that was deemed appropriate. And
14 that we are in a sort of unique strategic position to provide
15 those services. The Committee has hired seasoned
16 restructuring professionals who are intimately familiar at
17 this point with the facts and dynamics of these interdependent
18 Title III cases.

19 But again, the thrust was to make sure that whether
20 it was our committee or another committee or another entity,
21 that there be proper and adequate representation of the
22 retirees.

23 THE COURT: Do you agree with the United States
24 Trustee that this Court's authority is limited to directing or
25 declining to direct the U.S. Trustee to appoint a committee,

1 but that be -- selection of the membership of the committee,
2 whether it's selecting your committee or some other
3 configuration, is the sole province of the United States
4 Trustee as opposed to the Court?

5 MR. GORDON: I would agree, with the addition of the
6 words "in the first instance." I think that in the first
7 instance, the Court can direct the U.S. Trustee's office to
8 appoint a committee or to change the composition of the
9 committee under 1102(a)(2) or (a)(4).

10 THE COURT: But since we don't have a committee,
11 there would be no PREPA committee for me to direct them to
12 change the composition of.

13 MR. GORDON: That's correct.

14 THE COURT: Sorry for that dangling preposition.

15 MR. GORDON: It's quite all right. But yes, it is
16 also certainly conceivable that when you sort of meld
17 1102(a)(2) and (a)(4), it could be directed that the U.S.
18 Trustee appoint a committee. And if it is our committee, to
19 modify it as necessary to make sure that it adequately
20 represents PREPA retirees.

21 So, for example, our committee does not have a PREPA
22 retiree on it at this time. We did note in our original
23 motion that there is a vacancy on our committee now. There
24 was a resignation of one member in April, so we have an eight
25 member committee at this point. So that's something to be

1 considered.

2 But I do agree that in the first instance, this Court
3 can determine that a committee should be appointed and/or that
4 a committee -- the composition of a committee should be
5 amended in some way to provide adequate representation. And
6 then in the first instance, it would be the U.S. Trustee's
7 province to make that appointment or to change that
8 composition.

9 Clearly there could be some review process perhaps by
10 the Court to determine whether that's been done properly, but
11 it is certainly the province of the U.S. Trustee's office to
12 make those appointments.

13 THE COURT: Thank you.

14 MR. GORDON: So Your Honor, there were three
15 responses and one joinder with respect to the motion. The
16 Oversight Board and the -- joined by AAFAF, and the Official
17 Unsecured Creditors' Committee filed responses to our motion
18 in which -- and at the risk of putting words in the mouths of
19 other lawyers, and they can certainly correct me if I'm wrong,
20 but the gist of their responses was that they did not take a
21 position on whether a committee should be appointed for the
22 PREPA retirees. But if a committee were to be appointed,
23 their preference and desire is that the existing Official
24 Retiree Committee serve in that role.

25 The other response was an opposition filed by the

1 PREPA Retirement System, which is also known by its Spanish
2 acronym, SREAEE. But I will refer to it as the Retirement
3 System, if I may.

4 And in that reply, the Retirement System indicates
5 that it is capable of representing the retirees of PREPA, and
6 that it is the proper representative of those retirees. And
7 in particular, there was a mention in the Reply that certain
8 retiree associations had endorsed the Retirement System to
9 represent the retirees in these Title III cases.

10 And in our Reply, we indicate, among other things,
11 that we had not yet seen such an endorsement. The Retirement
12 System then filed a Sur-reply, and I thank counsel for the
13 Retirement System for their efforts to respond to the issues
14 that we raised in our Reply. And they did attach a resolution
15 that reflected an endorsement of the Retirement System to
16 represent the membership of those retiree associations.

17 I want to respond, though, to the Sur-reply a little
18 bit here. And I want to make clear that I'm not trying to
19 create issues, but I think my duty of candor to the Court as
20 it tries to consider whether it is appropriate and necessary
21 to appoint a committee, I want to make sure that I've alerted
22 the Court to any number of considerations that may be
23 relevant.

24 THE COURT: And so just before you go on there, I
25 want to underscore that the decision that I need to make

1 today, the decision that I will make today, is as to whether
2 or not to direct the United States Trustee's office to appoint
3 a committee.

4 I do not intend to -- well, I cannot direct the
5 United States Trustee's office to appoint a particular
6 representative. That is for the United States Trustee's
7 office. And so as not to be complicated, I'll adopt here "in
8 the first instance." We don't have to talk about what might
9 conceivably happen down the road.

10 And so to the extent there is anything that you feel
11 you can articulate briefly that you think is essential for the
12 U.S. Trustee's office to hear, since their representative is
13 here in this courtroom, that's fine. But you're principally
14 speaking to the U.S. Trustee's office when you're talking
15 about membership.

16 MR. GORDON: Absolutely, Your Honor. Thank you.

17 So the endorsement was -- it should be noted was
18 executed on May 28, just a few days ago. It does not indicate
19 whether the individuals who are the members -- individual
20 retirees who are members of these associations had any vote in
21 the endorsement, or whether they or the retiree associations
22 were completely aware of their options, that they could have
23 had both the Retirement System representing their interest and
24 a Retirement Committee representing their interests.

25 I just throw that out as a suggestion of things that

1 | may or may not have been aware to the people who signed the
2 | endorsement. The endorsement indicates that those retiree
3 | associations cover, I believe, 7,500 beneficiaries. There are
4 | 10,000 retirees, so it's not -- it's a robust number of
5 | retirees that the associations represent, but it is not a
6 | hundred percent of the retirees.

7 | And so those are things that I think someone needs to
8 | consider, you know, whether those endorsements are sufficient
9 | to identify the Retirement System as the proper
10 | representative. And if they think that that is proper, then,
11 | you know, certainly we respect that. We will abide by that.

12 | There are other issues though, as well. The
13 | Sur-reply attaches a set of regulations that were somewhat
14 | ironically, I think, attached to indicate the independence of
15 | the Retirement System and its ability to serve in this role as
16 | the representative for retirees. But if you -- and again, I'm
17 | not trying to create issues, but I think it's important to at
18 | least alert those who will be making the decision of these
19 | things.

20 | Paragraph 3 of Article 9 of the regulations indicates
21 | that PREPA itself has the authority under certain
22 | circumstances to terminate the function of the Retirement
23 | System completely at any time. And I believe that this issue,
24 | this independence issue, is something that is already being
25 | raised by PREPA and AAFAF in other pending litigation with

1 respect to certain members of the board of the Retirement
2 System.

3 So I don't think I'm alluding to something that isn't
4 already being addressed in some fashion, but that certainly, I
5 think, could raise concerns if the Retirement System could be
6 terminated at any point in time. If it is -- that if there
7 are issues down the road where there is a dispute or
8 disagreement between the Retirement System and PREPA, and
9 PREPA's management, that PREPA could stand before this Court
10 perhaps and make the argument that the Retirement System is
11 nothing more than a part of PREPA and doesn't really have
12 standing to oppose what they are doing.

13 Or they might actually go ahead and terminate the
14 function under this Article 9, Paragraph 3, and suddenly
15 you're at a mature place in the case without, perhaps
16 arguably, proper representation of the retirees. I think
17 that's at least something that, to me, is of some concern.

18 I also don't know, it hasn't been made clear, what
19 additional professionals have been hired by the Retirement
20 System to help them in the situation. I know they have
21 counsel here today who's very capable, but I don't -- I'm not
22 aware that they have restructuring advisors. I know that they
23 have the Cavanaugh firm as their auditors who are well
24 respected, but I do raise that issue as well.

25 And then finally, I just raised the question of, I

1 just don't know why there would be a concern from the
2 retirees' standpoint having additional representation and
3 additional resources there for their interest. There's
4 nothing that would preclude the Retirement System and a
5 retiree committee from weighing in on issues, working
6 collaboratively and so forth.

7 And again, as I mentioned, I think our committee has
8 some resources that could be very helpful. I think the
9 response has been in the pleadings that there's a concern
10 about confusion for retirees if there's more than one party
11 sort of representing their interests.

12 I can tell you at least from Detroit, my experience
13 in the Detroit case representing the retirement systems there,
14 that I don't think there was confusion. And if there were
15 different perspectives, and I don't even know if there would
16 be different perspectives between the two entities, between
17 the Retirement System and an Official Retiree Committee, I
18 don't think that that necessarily leads to the conclusion that
19 there is confusion.

20 I don't think that different perspectives necessarily
21 equal confusion. I think that different perspectives could be
22 helpful in looking at the issues from different angles. And
23 then at the end of the day, if there is a plan of adjustment
24 proposed at PREPA, you know, that plan is going to get voted
25 on by the retirees themselves. It's not voted on by the

1 Retirement System. It's not voted on by the committee. So
2 it's not as if one or the other entity could ultimately decide
3 for those retirees how things should work.

4 So there is that safety net that at the end of the
5 day, it's the retirees who vote on matters, and then they can
6 subscribe to the views of the Retirement System, if they
7 believe that the Retirement System is articulating the better
8 viewpoint. It's still possible.

9 Which just brings me back around again, Your Honor,
10 to just saying, again, I just want to reiterate that we
11 believe this is a matter as far as whether a committee should
12 be appointed or not, or whether the Retirement System provides
13 adequate representation is something for the Court to decide.
14 We raise it out of our general sense of responsibility to
15 retirees generally and our duty of candor to the Court. So
16 thank you.

17 THE COURT: Thank you, Mr. Gordon.

18 Did any other proponents of the Retiree Committees'
19 motion wish to be heard very briefly?

20 MR. ROSEN: Thank you, Your Honor.

21 THE COURT: Mr. Rosen.

22 MR. ROSEN: Thank you very much, Your Honor.

23 Your Honor, as we included in our pleading, the
24 Oversight Board supports the motion to the limited extent that
25 the Court enters an Order expanding the scope of the Retiree

1 Committee or seeks to expand the membership of the Retiree
2 Committee to include additional PREPA retirees.

3 We do oppose the motion, however, to the extent of it
4 seeks the formation of another committee. As stated
5 previously by the fee examiner and by the Court -- we're very
6 conscious of the costs associated with this, and we think that
7 the duplication of the effort of having a separate PREPA
8 retiree committee would be exponentially foisted upon the
9 Title III estate, and we would hope that the Court would limit
10 any relief to the expansion or the designation of the existing
11 Retiree Committee.

12 THE COURT: Do you believe I have statutory power to
13 do that or was that speech really for the U.S. Trustee?

14 MR. ROSEN: No. I believe you have the authority to
15 expand the scope as they requested it, yes, Your Honor, by
16 adding PREPA retirees to that committee.

17 THE COURT: But that committee has only been
18 appointed in the Commonwealth case. That committee hasn't
19 been appointed in the PREPA case.

20 MR. ROSEN: Yes, Your Honor. I don't know where
21 Mr. Gordon went, but -- I don't want to disagree with
22 Mr. Gordon, but through conversations that we had with the
23 U.S. Trustee, I think that the U.S. Trustee may have said that
24 the existing committee may have the right to represent those
25 PREPA retirees. So perhaps the U.S. Trustee could give the

1 Court a formal statement about that at this time.

2 THE COURT: Well, I was planning to call on Systema's
3 counsel, and then on the Office of the U.S. Trustee.

4 I'm sorry. Mr. Despins.

5 MR. DESPINS: Two seconds.

6 THE COURT: Yes.

7 MR. DESPINS: Luc Despins with Paul Hastings for the
8 Official Committee in the PREPA case.

9 Frankly, we didn't see how this movie would unfold in
10 the sense that we did not know there was a group that took the
11 position that they represented these retirees. And,
12 therefore, we had said we had no problems with the existing
13 committee being expanded to represent, basically the same
14 thing Mr. Rosen has stated.

15 But if there is a group there that says we are
16 representing those retirees, that -- the committee cannot
17 support a motion that could lead to the appointment of a
18 separate committee for PREPA, unless that's the other
19 committee.

20 So I'm not addressing Your Honor's question as to
21 whether you have the ability to do that, but I'm assuming that
22 you will find that you have no ability to do that. And if
23 that's the case, the committee, in light of what has
24 transpired, would not support the appointment of the separate
25 committee for PREPA.

1 THE COURT: Thank you. Anyone else on the proponent
2 or semiproponent side?

3 Okay. Counsel. Thank you.

4 MR. EMMANUELLI JIMENEZ: Good morning. Thank you,
5 Your Honor.

6 THE COURT: Good morning.

7 MR. EMMANUELLI JIMENEZ: My name is Rolando
8 Emmanuelli Jimenez. I represent PREPA's Retirement System or
9 PRS. PREPA's Retirement System has unique characteristics that
10 do not make it comparable with the Commonwealth retirement
11 systems that are under the umbrella of the Official Retiree
12 Committee. That is, central government, teachers and judges.

13 PRS is an independent entity, with a Board of
14 Trustees with particular rules and regulations, separate
15 assets and funding source. This board is regulated by voting
16 rules that guarantee a balance between the interest of the
17 different stakeholders.

18 The PRS is not under this Title III proceeding.
19 Therefore, the Board of Trustees maintains all its power to
20 control what is going to be with the system.

21 By the way, Article 9 mentioned by brother counsel
22 Gordon states that the Board of Trustees should consent to the
23 dissolution of the Retirement System, so it's not unilaterally
24 decided by PREPA.

25 There is also a trust agreement with the bondholders

1 with particularities that no other retiree system enjoys,
2 especially the provision that any payment to bondholders is
3 subordinated to the payment of PREPA's operational expenses,
4 including retirement obligations. So there is no
5 underrepresented interest of the retirees in PREPA's Title III
6 case.

7 The U.S. Trustee declined to appoint an official
8 committee of PREPA retirees under the discretionary authority
9 given to him by the Section 1102(a)(1) of the code. Any
10 motion seeking relief under either section 1102(a)(2), an
11 additional committee, or section 1102(a)(4), modification of
12 the retiree committee, must comply with the burden of section
13 1102 to establish that the relief is necessary to ensure
14 adequate representation.

15 The committee's motion does not meet the burden of
16 Section 1102 of the Code of establishing lack of adequate
17 representation. On the contrary, PREPA's retirees are
18 represented by the Board of Trustees of the PRS. The majority
19 of the retirees have expressed that wish to be represented by
20 the Board of Trustees. You can see the resolution that is
21 attached to docket 3228 in the Commonwealth case.

22 Out of 10,000 PRS participants of whom are current
23 retirees, 7,522 express through the respective organizations
24 their wish to be represented by the Board of Trustees. With
25 that crushing number, Your Honor, how come the committee would

1 hold their position that here is an issue of
2 misrepresentation? There is no evidence that PREPA retirees
3 are alleging that they are not adequately represented. This
4 is just a blanket statement in the committee's motion without
5 presenting facts to support it.

6 The intervention of the committee would be
7 disruptive, duplicative and unnecessary. Based on the
8 differences between other retirement systems, there will
9 potentially be disputes between the committee and the PRS
10 regarding the course of action and communication and advice to
11 PREPA's retirees.

12 Having PREPA's retirees entrusted the Board of
13 Trustees of the system for the representation in this Title
14 III case, this will cause suspicion and mistrust regarding the
15 committee's actions and recommendations. This could lead to
16 chaos and recklessness.

17 There will be two teams of attorneys, financial
18 advisors, actuaries, et cetera on behalf of PREPA's retirees.
19 This will cause unnecessary inefficiencies and delays. This
20 also will increase the cost of this Title III case, leaving
21 less funding for retirees.

22 For those reasons, Your Honor, we understand that
23 there is no justification to either extend the jurisdiction of
24 the retiree committee, nor to appoint a new committee for the
25 PREPA's Title III case. Thank you.

1 THE COURT: Thank you.

2 And for the office of the United States Trustee --

3 ASSISTANT U.S. TRUSTEE LECAROS ARRIBAS: Good

4 morning, Your Honor.

5 THE COURT: Good morning.

6 ASSISTANT U.S. TRUSTEE LECAROS ARRIBAS: Monsita

7 Lecaroz, Assistant U.S. Trustee. With me is Michael Bujold

8 from our executive office in D.C.

9 THE COURT: Good morning.

10 ASSISTANT U.S. TRUSTEE LECAROS ARRIBAS: Your Honor,

11 we tried to submit our position in writing for the Court's

12 benefit and for the parties' benefit. It doesn't seem to have

13 done much in that regard.

14 We take no position on the merits of the Retiree

15 Committees' motion or the opposition to it, Your Honor. If

16 the Court orders relief under (d)(2) -- under (a)(2) or

17 (a)(4), we will undertake our statutory duty and make the

18 appointments as ordered by the Court.

19 I don't want to rehash our motion, so if Your Honor

20 has any questions for me?

21 THE COURT: Well, to the extent you're willing or

22 able to share your reasoning, I'd be grateful there. I think

23 it is objectively obvious that there are serious issues for

24 retirees in connection with the Title III proceedings of

25 PREPA.

1 There are the provisions of the fiscal plan that had
2 been noted by Mr. Gordon. There is pending litigation about
3 whether the plan is part of PREPA or not. There may well be
4 issues like the individual benefit claim levels that go to
5 actuarial assumptions and things on which the Board of the
6 Retirement System and retirees might differ. And until the
7 opposition was filed to this motion, there wasn't an
8 appearance in the Title III case for PREPA of a retiree
9 representative entity.

10 And so if you came to comfort with the notion that
11 there was no necessity, it would just help me to understand
12 that a bit more, if you're in a position to share?

13 ASSISTANT U.S. TRUSTEE LECAROS ARRIBAS: I'll tell
14 you what I can. At the time of the formation of the -- and
15 the appointment of the Retiree Committee, we understood that
16 it covered all the retirees in Puerto Rico. The Title III
17 filing of PREPA was later.

18 As to why we decided not to appoint a committee under
19 (d)(1) -- under (a)(1) in the PREPA case, I can't go into
20 that. It's a deliberative process --

21 THE COURT: Yes.

22 ASSISTANT U.S. TRUSTEE LECAROS ARRIBAS: -- that --
23 but as you know, we've given a lot of thought to all this in
24 every Title III case and through the first original
25 committees, so that was our decision at the time.

1 As to everything that you mentioned regarding the
2 actual controversy, we really don't take that position. I
3 understand, Your Honor, that's part of the criteria that you
4 would need to analyze under the adequate representation
5 analysis that requires -- that it's required under the Retiree
6 Committee's request to Your Honor for a modification under
7 (a)(4) or an appointment of a committee under (a)(2).

8 And once Your Honor decides, based on that analysis,
9 then we would be able to decide whether to appoint or to
10 modify the committee.

11 THE COURT: Yes. Thank you.

12 ASSISTANT U.S. TRUSTEE LECAROS ARRIBAS: I'm sorry,
13 Your Honor. You're welcome.

14 THE COURT: Thank you for that input.

15 Mr. Gordon, did you have any remarks by the way of
16 reply?

17 MR. GORDON: Your Honor, actually, to answer your
18 question, I don't think I have anything further to add.
19 Mr. Emmanuelli mentioned that he didn't think that we have
20 made a showing sufficient, and I just want to emphasize that
21 we don't necessarily -- we didn't view this as an evidentiary
22 hearing, and we also didn't view it as our role to argue
23 strenuously one way or the other on this matter.

24 We don't have a PREPA retiree on our committee. We
25 are just trying to raise issues for the Court or whomever to

1 consider in that regard, and that's as much as I can tell you.
2 I can't think of anything else.

3 No, I have nothing further, Your Honor.

4 THE COURT: Thank you.

5 MR. GORDON: Thank you.

6 THE COURT: Well, it seems clear to me that there
7 are, as I mentioned in my chat with Ms. Lecaroz, that there
8 are serious retiree-related issues within the PREPA Title III.
9 It is not clear to me on this record, though, that there is a
10 problem of inadequate representation of the PREPA retirees
11 requiring the appointment of a formal retiree committee now.
12 And that may just be as a practical matter, because there --
13 there hasn't been an inflection, a specific inflection point
14 for those issues to be engaged at this point with the very
15 recent certification of the fiscal plan and the development of
16 the privatization proposals. And, you know, we are in a
17 fairly fluid situation.

18 And so I think it best for me and for frankly the
19 office of the United States Trustee, to have the opportunity
20 to observe and reflect for a little bit longer, and see how
21 things ripen and see what sorts of issues are or are not
22 raised and by which organizations or constituencies, whether
23 there are concerns raised by individual retirees of an order
24 of magnitude that would queue up the issue again.

25 And so I am denying without prejudice the Retiree

1 Committee's application that I construe as one for a court
2 direction to the office of the United States Trustee to
3 appoint a retiree committee for PREPA. So that is denied
4 without prejudice, and we will see how things develop.

5 MR. GORDON: Your Honor, I apologize, but just then,
6 for the record, just to make clear if we could, for the
7 comfort of the existing committee members and the existing
8 committee, we are not the official committee in PREPA's Title
9 III case. That's our understanding, and that has been
10 expressed as well now by the U.S. Trustee's office. I just
11 wanted to make sure that we were clear about that.

12 THE COURT: That is my understanding as well. And
13 I'm looking again to the United States Trustee's office end of
14 the table. The existing Retiree Committee has not been
15 appointed in the PREPA Title III case.

16 ASSISTANT U.S. TRUSTEE LECAROS ARRIBAS: (Nodding
17 head up and down.)

18 THE COURT: And does not have responsibilities in the
19 PREPA Title III case.

20 MR. GORDON: Very good.

21 And you say, you're saying, you're denying the motion
22 without prejudice, and I understand that. I will just express
23 that it is somewhat again, I don't know if I would say the
24 word uncomfortable, but difficult for us to be -- I hope that
25 somehow the process -- someone will be vigilant about the

1 process because you can understand that there is no one who
2 has an incentive in the Title III case to say hey, those
3 people are not well represented.

4 And if those people, if there's a group of creditors
5 who aren't being adequately represented, part of the reason
6 for forming a committee is they don't have a voice
7 necessarily. They don't know how to reach out to the U.S.
8 Trustee's office or to somebody to say we need representation.
9 They may not know we need representation.

10 So I just -- you know, I guess this is my way of
11 saying that I hope that somehow there's a vigilance going
12 forward. Because if things become complex and we get to a
13 mature point in the case, it becomes hard at that point to say
14 oh, now we need someone to get involved. But I respect and
15 understand the position from the Court today.

16 THE COURT: Well, I will say that I'm expecting in
17 the first instance, that the U.S. Trustee's office, which has
18 the statutory power to appoint committees, will be on the
19 front line of that vigilance in connection with its monitoring
20 of the case.

21 And I would also like to suggest in that connection
22 that to the extent there are questions raised by your retirees
23 to your committee, PREPA retirees to your committee, you might
24 direct them in the first instance to make their inquiries of
25 the U.S. Trustee's office as to whom they should direct their

1 questions to.

2 And if the United States Trustee's office has any
3 issue with these two observations, I invite Ms. Lecaroz to
4 come back to the podium. But that would be my suggestion for
5 now, and I would be expecting that if the U.S. Trustee's
6 office perceives that things are inadequate or not properly
7 attended to, that the United States Trustee's office would
8 initiate a process.

9 MR. GORDON: Thank you, Your Honor.

10 ASSISTANT U.S. TRUSTEE LECAROZ ARRIBAS: Monsita
11 Lecaroz. Yes, I want to assure the Court that we are
12 constantly monitoring the case and we are constantly
13 monitoring the committee composition, and we will continue to
14 do so. And we are always able to, and willing to, receive any
15 communications from anybody regarding to the case. Thank you.

16 THE COURT: Thank you very much.

17 And so it is now five to 12:00, and we promised a
18 break from 12:00 to 1:00 for lunch. And so we will begin the
19 lunch break now.

20 We will resume at one o'clock with the renewed 2004
21 motion before Judge Dein. See you in an hour. Thank you.

22 (At 11:55 AM, recess taken.)

23 (At 12:57 PM, proceedings reconvened.)

24 HONORABLE MAGISTRATE JUDGE DEIN: You may be seated.

25 Good afternoon. I've given you all of lunch to

1 resolve this. How did you do?

2 MR. DESPINS: I'm glad you haven't lost your sense of
3 humor. That's good to hear.

4 HONORABLE MAGISTRATE JUDGE DEIN: Talk to me later,
5 in an hour. We'll see how I'm feeling.

6 MR. DESPINS: So, Your Honor, I think we divided the
7 time -- I should say good afternoon, Judge Dein. Luc Despins,
8 Paul Hastings on behalf of the Committee. We're here on our
9 renewed motion for 2004 examination.

10 I think we had reserved 30 minutes for our time. I'd
11 like to take 10 on opening, 10 for reply. And let me jump
12 right in.

13 First, as a housekeeping matter, we are incorporating
14 here all our prior pleadings and the arguments. We're not
15 going to repeat them. No worries. But I wanted to make sure
16 that that was there for the record.

17 And I'll say at the outset, because I know you will
18 get there in about two minutes, I will get to the following
19 questions, which is why now, why not wait, talk to me about
20 duplication. So we'll cover all those points.

21 But first, I want to talk about just a little bit of
22 background, not a lot, but I think it's important to recall
23 the context.

24 And as I said before, I would not be making the
25 statement if it was not a quote from a newspaper article, but,

1 you know, the current governor has called the past Puerto
2 Rico, quote, a big Ponzi scheme. And there's a sitting First
3 Circuit judge that has suggested that a grand jury
4 investigation -- a grand jury should be empanelled to look at
5 what happened in the past. So this is a very serious matter.

6 When you contrast that, Your Honor, with the tenure
7 -- first let's look at the report that we've gotten so far
8 from the investigator, which is fine. It is attached to the
9 pleadings, and it was filed in April.

10 And you can -- I'm not going to go through it, but I
11 think it shows that they're approaching things in a very
12 different way than needs to be approached, from the point of
13 view of recovery against bad actors. Not from the point of
14 view of writing a report on measures that should be taken to
15 avoid similar things. We're not interested in that. We're
16 interested in dealing with claims against bad actors or
17 subordinated claims or challenging claims of people of that
18 ilk.

19 And, you know, the investigator has said many times
20 that he's not interested in a finger pointing exercise. And
21 that's confirmed by the statement we put in our Reply.
22 Governor Vila, who was a former governor during the COFINA
23 period, said, one, that I can confirm that what the committee
24 says in the renewed motion is correct.

25 And what he means by that is that he met with the

1 investigator or somebody from his office, and the first thing
2 they told him is that they're not interested in pursuing
3 claims or guilty parties. And that we're not, quote, we're
4 not doing any kind of investigation to say who is to blame or
5 anything.

6 And we probably will hear from Mr. Mungovan that they
7 are going to identify claims. But everything we see from the
8 investigator and confirmed by witnesses that have been
9 interviewed is that, in fact, he is telling them that that's
10 not the case.

11 HONORABLE MAGISTRATE JUDGE DEIN: So I'm not going to
12 stop you, but I do want you to focus for me in this intro on
13 what you're actually getting.

14 MR. DESPINS: Yes.

15 HONORABLE MAGISTRATE JUDGE DEIN: My point throughout
16 this whole thing was not that you would be using the materials
17 the same way as the independent investigator, but the question
18 was really is there a world of documents that are being
19 obtained that everyone can use differently --

20 MR. DESPINS: Yes.

21 HONORABLE MAGISTRATE JUDGE DEIN: -- but not having
22 to be searched for twice.

23 MR. DESPINS: Okay. So --

24 HONORABLE MAGISTRATE JUDGE DEIN: And there seems to
25 be very different representations in the pleadings as to

1 | what's actually been produced for the committee to have access
2 | to.

3 | MR. DESPINS: So let's start with that. Until we
4 | filed our motion, the only thing that was produced to us by
5 | the investigator, and the source being Santander or Banco
6 | Popular, were what I would call phonebooks, not -- of course,
7 | not phonebooks, but public documents, deal documents, et
8 | cetera.

9 | The first custodial production occurred after we
10 | filed our motion. It was from Santander. So when they say
11 | they filed thousands of pages, yes, there are a lot of pages
12 | in a prospectus or in a deal closing binder, but the custodial
13 | production occurred after we filed our motion.

14 | So you might say, so therefore you're getting it, so
15 | you're happy. No, Your Honor. The problem we have is that we
16 | have those documents, but we had asked the investigator for
17 | what search terms were used, because as you know, I know you
18 | do this every day, without search terms and custodians, it
19 | could be meaningless. Meaning, you could say to -- I'm
20 | exaggerating. You could say to a legal assistant at GDB,
21 | please produce all documents regarding the financial crisis
22 | and they'll be two pages. But if that's directed to the right
23 | person, it could produce thousands of pages. So they have not
24 | shared that, so we don't know.

25 | Even worse than that, GDB has not produced a single

1 document. Let me be more precise. GDB may have produced
2 documents, we don't know the details, to the investigator, but
3 not one was produced to us. Reason being, because we can't
4 apparently agree on an NDA, but we've been after them for
5 months, Your Honor, on this. Literally for months. And every
6 time, oh, yes. We'll get back to you. We'll get back to you.

7 And I think we should be rewarded for not having come
8 to court earlier, because we tried to figure it out and it was
9 never resolved. I think we'll hear from counsel for AAFAF as
10 to whether that issue is resolved today. I don't believe that
11 what he proposed is going to resolve the issue, but clearly
12 today we have zero documents.

13 And as you know, we know this from the GAO report,
14 which is a public report filed by a governmental organization
15 that talked about the financial crisis in Puerto Rico and the
16 debt issues and all that, and places GDB at the center of
17 this, you know, what the governor called a Ponzi scheme, as an
18 enabler of this whole system. And that's in the GAO report.

19 So we know that GDB is critical to this, and we've
20 seen zero documents. And you've heard this morning as to
21 what's -- why GDB is relevant today. So that's the first
22 thing.

23 So we're not getting -- we certainly don't know.
24 We've given them the topics. We did what Your Honor said. We
25 gave them the request for production. And as far as we know,

1 they did ask them to produce those documents. So we're not
2 debating that.

3 The question is, we have no visibility into search
4 terms, custodians. And, in fact, when we asked them for
5 custodians the first time this came up, you know, they had
6 left out the members of the Board that are -- that were
7 previously at Santander or Banco Popular and GDB, I forget
8 which one of these three entities, but certainly two of those
9 three.

10 And they never told us that they would until we filed
11 our motion. And then they said, oh, yes, we've asked them for
12 documents. We don't know who they asked, those members of the
13 Board or their former employers. We don't know.

14 In any event, Your Honor, you're right that in an
15 ideal world, if we have all the documents, there is no
16 problem. But right now they're only sharing with us
17 Santander, Banco Popular, and any other documents where the
18 producing party has agreed that we can see it.

19 Well, what do you think the producing parties are
20 doing? They're not -- they're not agreeing that we can see
21 them.

22 HONORABLE MAGISTRATE JUDGE DEIN: Is that true? Do
23 you know that?

24 MR. DESPINS: Yes, because we know that --

25 HONORABLE MAGISTRATE JUDGE DEIN: We know GDB.

1 MR. DESPINS: We know GDB, we haven't gotten one
2 document. But we know from their response that they've said
3 they've received documents from dozens of people. So I know,
4 I can count that Santander, Banco Popular, that's only two, so
5 they have other people.

6 And we don't have those documents except for Standard
7 & Poor's, again, you know, phonebooks, their rating reports
8 and all that, that are public documents anyway. But we have
9 no documents from investment banks that were -- other
10 investment banks that were underwriters. And there's a bunch
11 of those.

12 So either they have not received documents from them
13 or they're not sharing them with us because they have the
14 power not to share with us if the producing party says no. So
15 that doesn't work.

16 And then the question becomes, Your Honor, why not
17 wait to see the report. So that's very important to
18 understand what relief we're seeking. Today, nothing would
19 happen. Meaning, if you grant our relief, nobody would have
20 to lift a finger today. Santander and Banco Popular would
21 have to -- would have to start conferring with us on August
22 15th as to any additional production.

23 You might say, well, if you get all the documents,
24 why do you need additional production? Of course, we're not
25 going to have them produce the same documents twice. So it's

1 going to be either very limited, because they will produce all
2 the responsive documents, or it won't, because the
3 investigator didn't get all the documents they should get.
4 That's the only relief you're granting today, meaning that it
5 would start on August 15.

6 And you might say well, why not wait for the report?
7 And my point on that is as follows: There are two worlds we
8 live in. Either -- actually, three. The first one is the
9 report -- they say don't worry, the report's coming August 15,
10 so there's no problem.

11 And they told you before when we were not here but we
12 were in New York, or maybe we were in Boston. I forget. But
13 anyway, it was in New York. They told you that the report
14 would be ready late March, early April. Was that a binding
15 agreement? No. But that's certainly the guidance they gave
16 to everyone. And they blew through that guideline without any
17 explanation, which is fine.

18 But the point is that now they're saying August 15,
19 but we don't know whether that's going to happen, because they
20 say that's subject to people producing. And of course, you
21 have to know there's a symbiotic relationship between the
22 investigator and the targets, because the longer it takes for
23 them to produce, the more time he needs. And then we're on
24 the sidelines.

25 So the point is either they will file that report --

1 let's start with number one. They will not file that report
2 by August 15. Well, then we'll be very glad that Your Honor
3 entered an Order today saying August 15 is when the clock
4 starts. Or they will file a report, and then there are two
5 alternatives.

6 It will be, as they will tell you, that it will
7 contain all claims, they will identify all claims against
8 other parties, et cetera, which is contrary to what they've
9 said in their witness interviews. And if that's the case,
10 then I'm not going to -- again, we have no interest in
11 duplicating stuff.

12 There's a fee examiner. We've heard the discussion
13 this morning about how closely he's following professionals.
14 I'm sure they would be all over us if we did that. No
15 incentive to duplicate. They will take their report and use
16 it to the maximum extent possible.

17 And if the report is of the type we think it will be,
18 which is a Reader's Digest version of, you know what? They
19 incurred too much debt. Well, I think we know that. Or
20 there's a lack of transparency. We know that. Congress has
21 already said that in the PROMESA Statute.

22 So if that's the report, then we'll be very glad that
23 we started on August 15. Why August 15? Why not wait until
24 September? Well, the reason being is that there is a deadline
25 that's going to expire.

1 You might say, well, that's years away, but May 9,
2 2019, is just around the corner, because you have to file a
3 complaint by then. And when you file a complaint, you have to
4 do discovery.

5 And the way these guys -- these guys -- what I mean
6 is targets generally produce documents. It's not going to be
7 produced on September 15. There's going to be a lot of back
8 and forth. You know this from the other 2004 aspects of this
9 case where we're going at it now for months. And therefore,
10 we cannot miss that deadline of May 2019.

11 But more importantly, there's the GDB proceeding
12 that's going full bore right now. And the other part that's
13 going full bore are the plan negotiations.

14 You have people showing at the table and saying I
15 have four billion dollars of those bonds. They're not going
16 to say well, by the way, they're subject to a challenge debt.
17 They exceeded the debt limits under the Constitution and all
18 that. They're not saying that. They are assuming their
19 claims are allowed.

20 There's nobody challenging that. There's nobody
21 investigating that, as far as we know. That has to happen now
22 because how can we have a settlement or a discussion with a
23 group of creditors that are allegedly owed billions of dollars
24 when their claims are subject to challenge?

25 But that's why, Your Honor, we think there's a need

1 to act now. And also, that's why we made it very limited,
2 meaning the rope you're giving me really is from August 15.
3 The two banks have to meet and confer with us. Very modest
4 exercise given that we filed our initial motion a year ago.

5 And then there's a check-in point in September where
6 you might say, well, committee, stand down. We have a
7 beautiful report that explains all the claims and all that
8 and, therefore, there's no need to do any investigation.
9 That's an alternative. Or no, go ahead, committee. Keep
10 doing what you're doing.

11 But to start that argument in September, it's going
12 to be a waste of time. And also, the investigator needs to
13 know that the Court is sending you a signal, which is we've
14 given you a year basically. August 15 is -- they were
15 appointed September 1st. Fine. It's not a year, but almost a
16 year.

17 They're not giving you more time, meaning you can
18 keep going with your investigation. If you want to take two
19 years for your report, that's fine, but the Court is not going
20 to put the process on hold for you to do your report. And
21 that is why it's so important to rule on this today, Your
22 Honor.

23 HONORABLE MAGISTRATE JUDGE DEIN: So let me just ask
24 you a few questions on very concrete facts.

25 As I understand it now, you are saying, though, that

1 you did propose document requests and that as you understand
2 it now, those were conveyed; is that correct?

3 MR. DESPINS: That's correct, Your Honor.

4 HONORABLE MAGISTRATE JUDGE DEIN: And that the issue
5 of the custodians is no longer -- you identified certain
6 custodians, I think it was Mr. Garcia, Mr. Gonzalez, and as
7 far as we understand now, they were -- those records were
8 searched?

9 MR. DESPINS: No, we never heard back on that.

10 HONORABLE MAGISTRATE JUDGE DEIN: You don't know?

11 MR. DESPINS: We know from their response that
12 they've asked for documents from these gentlemen, but we don't
13 know how. From the previous employer, from their current
14 files, we don't know.

15 HONORABLE MAGISTRATE JUDGE DEIN: So the documents
16 you have from Santander and Banco Popular, you're satisfied
17 that you can review those in this time period between now and
18 August?

19 MR. DESPINS: Yes, we --

20 HONORABLE MAGISTRATE JUDGE DEIN: But you want to
21 know what the search terms were and you want to know who else
22 produced documents?

23 MR. DESPINS: Correct. And we want those documents
24 to be produced to us, regardless of whether these people
25 consent or not.

1 HONORABLE MAGISTRATE JUDGE DEIN: You want those now,
2 not before August?

3 MR. DESPINS: Correct.

4 HONORABLE MAGISTRATE JUDGE DEIN: All right.

5 MR. DESPINS: But I would say, Your Honor, the search
6 term -- you know this. I don't know why I'm telling you
7 this.

8 HONORABLE MAGISTRATE JUDGE DEIN: Unfortunately, I
9 know a lot about search terms, but that's okay.

10 MR. DESPINS: I know. I'm sorry. But they're
11 critical. And also meaning what follow up was made and all
12 that. I mean, there are so many ways of dodging production,
13 as we know. So it's very important to know that.

14 But again, the limited relief we're asking from
15 August 15 is the obligation to meet and confer. If we have
16 everything, there'll be nothing to meet and confer about.

17 So we're -- my point is we're assuming we're in a
18 world where either the report won't be filed August 15, or the
19 report will be a Reader's Digest report, or there will be some
20 claims identified, not others, but that's why we're saying
21 let's start this process now.

22 HONORABLE MAGISTRATE JUDGE DEIN: What I don't want
23 to do, though, is end up in September with a discussion about
24 what has been produced and what has not been produced. And so
25 I will hear from everybody on that. But that's really a

1 critical concern to me at the moment, because there seems to
2 be shifting representations as to what's been available and
3 what has not been available.

4 Okay. And just for GDB, the August time schedule
5 doesn't fit the Title VI schedule.

6 MR. DESPINS: No. First of all, these documents
7 should have been produced months ago.

8 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

9 MR. DESPINS: So they need to be produced now. But
10 we will sit down with counsel for AAFAF, with Suzanne Uhland
11 and try to have a schedule that works both for the discovery
12 and the Title VI.

13 HONORABLE MAGISTRATE JUDGE DEIN: Okay. So you
14 expect that to be addressed in the whole Title VI briefing,
15 the new schedule?

16 MR. DESPINS: But I want to be precise. There are
17 two things going on with GDB. GDB, there are issues about
18 whether the GDB folks should get a release under their --
19 because the Code, the Code PROMESA doesn't provide for that.

20 But putting that aside, whether there are facts and
21 circumstances that would say that these people should not get
22 a release, that's a very narrow issue. But GDB was the bank
23 that structured all these transactions, so they're at the
24 center of all these.

25 So for example, the issue of whether the 2014 GO

1 bonds should be challenged and what knowledge people had as to
2 whether it violated the debt limit under the Constitution,
3 that's all within GDB.

4 That may or may not relate to the Title VI release
5 provisions, but it's broader. So there are two things going
6 on at the same time there.

7 HONORABLE MAGISTRATE JUDGE DEIN: Do you expect it to
8 participate in the schedule of the Title VI process, to
9 include discovery, or you don't?

10 MR. DESPINS: No. I think that we should deal with
11 GDB here because it's a broader request. I'll give you
12 examples of documents we've asked of Ms. Uhland, for example.
13 We've asked her to give us copies of bank accounts and things
14 like that, or to see what the relationship was between the
15 depositors and GDB. Very cut and dry, boring legal documents.
16 But we're not asking her to produce any e-mails or anything
17 like that. That should be done in the context of this effort
18 here.

19 HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

20 MR. DESPINS: Thank you, Your Honor.

21 MR. MUNGOVAN: Good afternoon, Your Honor. Timothy
22 Mungovan from Proskauer Rose for the Oversight Board as the
23 representative of the Commonwealth and the Title III debtors.

24 Your Honor, let me just tell you up front what our
25 recommendation is, and then I can address Mr. Despins'

1 arguments and commentary.

2 For the Oversight Board, we believe that the motion
3 should be denied without prejudice subject to their ability to
4 come back and renew their motion once again in August or
5 September after the report has been finalized and completed,
6 all of the documents have been assembled. And we can have a
7 process, and we're happy to work out with Mr. Despina a
8 process where he can identify to the Court what else he needs,
9 when he needs to get it by, and a path to do that.

10 Let me address specifically two items. So the UCC's
11 motion gets a number of things wrong. I'm just going to focus
12 on two, and I'm going to get right to the document issue.

13 But first, the UCC asserts repeatedly throughout its
14 motion papers, both its Motion and its Reply, that the
15 independent investigator is not going to identify potential
16 claims.

17 I communicated again yesterday with the independent
18 investigator. I have no idea where the UCC comes to the
19 conclusion that claims will not be identified. In the April
20 5th report, the independent investigator states specifically
21 that it will identify claims. I can give you the page and
22 paragraph number.

23 HONORABLE MAGISTRATE JUDGE DEIN: I have to admit
24 that I couldn't tell whether it was all kinds of claims or
25 regulatory claims or it was missing a comma.

1 MR. MUNGOVAN: It's a fair point, Your Honor.

2 So I communicated directly with counsel for the
3 independent investigator yesterday, and I can tell you that
4 the independent investigator will provide a comprehensive
5 discussion of claims and avenues for value recovery in its
6 final report.

7 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

8 MR. MUNGOVAN: So I think that --

9 HONORABLE MAGISTRATE JUDGE DEIN: I understand
10 that -- I think the report wasn't as clear, but thank you.

11 MR. MUNGOVAN: I wanted to be as crystal clear as I
12 could be. That's precisely what I was told last night. I
13 expect that the report will comply with the representation
14 that I just made to you on behalf of the independent
15 investigator.

16 Let me go to the second point, which is the
17 documents, and what's been provided and what hasn't. Let me
18 try to simplify this. As I was listening to Mr. Despina
19 present to the Court, I grouped the documents into three
20 categories, okay?

21 The first category are the documents from the Popular
22 and Santander entities. That's category one. Category two
23 are the documents at GDB, or the GDB related documents. And
24 you can group categories one and two together to some degree,
25 because they are the Puerto Rico financial institutions that

1 are the subject of the UCC's motion. I've segregated them for
2 a reason, which I'll explain in a minute. And then there's a
3 third category, which are what we'll describe as the other
4 parties that have been the subject of the independent
5 investigator's investigation.

6 With respect to category one, which are the Popular
7 entities and the Santander entities, the UCC has all of the
8 documents that the independent investigator has obtained from
9 those parties. Period.

10 HONORABLE MAGISTRATE JUDGE DEIN: All right. But
11 with -- so for those entities, his concern is the search terms
12 and the custodians?

13 MR. MUNGOVAN: So with respect to that issue, Your
14 Honor, that issue has not been raised before today. I do not
15 recall seeing it in the briefing. I know that there are
16 regular calls between the investigator and both committees,
17 the Retiree Committee and the UCC. And to my understanding,
18 that issue has not been an issue that the UCC has articulated
19 and said, we have a problem with this.

20 I'm more than happy to work with the independent
21 investigator and Mr. Despina to discuss search terms,
22 custodians and the like, and to see whether there's a basis to
23 bridge this apparent disagreement. But when I tell you that
24 this is the first time I've heard of it, I've heard of it 15
25 minutes ago.

1 HONORABLE MAGISTRATE JUDGE DEIN: No -- well, I think
2 it is in the briefing, but there's a lot of briefing.

3 MR. MUNGOVAN: If it is, I apologize, Your Honor.

4 HONORABLE MAGISTRATE JUDGE DEIN: But is it something
5 that --

6 MR. MUNGOVAN: I think it's something that can be
7 worked out.

8 HONORABLE MAGISTRATE JUDGE DEIN: -- you think can be
9 worked out?

10 MR. MUNGOVAN: I have no doubt that it can be worked
11 out, Your Honor. As you know, we've appeared in front of you
12 on other cases, and search terms were an issue. I understand
13 it intuitively. I'm more than happy to help bridge the gap.

14 HONORABLE MAGISTRATE JUDGE DEIN: So it's not
15 something you're claiming top secret on?

16 MR. MUNGOVAN: I can't -- until I speak with the
17 independent investigator about it, I can't tell you that they
18 may not take that position. I just don't know. But I'm happy
19 to try to work it out. And if it is an issue, I'm happy to
20 report back to the Court, and I'm sure Mr. Despins will.

21 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

22 MR. MUNGOVAN: That's Popular and Santander. That's
23 category one. I think that we can resolve that.

24 With respect to the GDB, let me just tell you the
25 current state of play as I understand it. Right now, the

1 independent investigator is working with AAFAF and GDB to
2 obtain documents, but right now the independent investigator's
3 itself receiving those documents on an attorneys' eyes only
4 basis, on a read only, attorneys' eyes only basis. And so the
5 ability -- the independent investigator at this moment does
6 not have the ability to share those documents with the
7 committees.

8 If an agreement can be worked out with AAFAF, and I
9 expect that Mr. Sushon will be presenting to you next, whereby
10 a process can be developed and agreed upon through which the
11 documents can be shared by the independent investigator with
12 the committees, I'm sure that the independent investigator
13 will be willing to do that.

14 HONORABLE MAGISTRATE JUDGE DEIN: That's a lot of
15 documents to have attorneys' eyes only for.

16 MR. MUNGOVAN: I understand.

17 HONORABLE MAGISTRATE JUDGE DEIN: I'm having a hard
18 time wrapping my head around that one.

19 MR. MUNGOVAN: I understand. I'm going to defer the
20 explanation of that position to Mr. Sushon.

21 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

22 MR. MUNGOVAN: But I believe right now the
23 independent investigator is constrained by that restriction.
24 And in order for it to be able to accomplish its
25 investigation, it has to live within the restrictions that are

1 being placed upon it by the parties from whom it is seeking to
2 obtain documents, which is a good segue to category three.

3 Category three, first of all, is not technically the
4 subject of the UCC's motion, as I read their motion. The
5 motion is directed toward the Puerto Rico financial
6 institutions, which are comprised of three effectively,
7 Popular, Santander and the GDB, as I read their motion.

8 With respect to the other parties, in an effort to
9 expedite the investigatory process, as I have been informed by
10 the independent investigator, they have sought to do things on
11 a voluntary basis with the parties, the third parties with
12 whom they are interacting and they're seeking information,
13 rather than serving a Subpoena.

14 If a Subpoena is served, there won't be a restriction
15 on the independent investigator to share documentation, or
16 they won't have to obtain the producing party's consent to
17 sharing. The fact is, I believe, that many of the producing
18 parties, perhaps all of the parties in what I'll call the
19 third category, have not consented to the independent
20 investigator's request to share those documents with the
21 committees.

22 Here's -- I believe that there is a path forward with
23 respect to this, this particular issue, and maybe all of these
24 issues, Your Honor, which is that the independent investigator
25 expects to file its final report and an exit plan. And as

1 part of that exit plan, the independent investigator will
2 indicate, I anticipate, that it has created a document
3 repository.

4 And that document repository is a resource that will
5 be available to a party to request permission of the Court to
6 obtain access to. And to the extent that a party objects, a
7 producing party objects to their documents being made
8 available, that is an issue that will be joined before this
9 Court.

10 In my view, Your Honor, giving the time scale that
11 we're talking about, which is a couple of months, first of
12 all, these documents aren't even subject to the UCC's motion I
13 believe fairly read.

14 And secondly, on a time scale basis, allowing this
15 process to play out where the independent investigator
16 finishes gathering documents from parties, particularly on a
17 voluntary basis, targeting August to complete that process,
18 targeting August to finalize that document to repository, and
19 making a process available with the Oversight Board and the
20 committees to allow the committees to pursue those documents
21 in that repository. That to the Oversight Board, Your Honor,
22 is a far more efficient and effective and expedient path to
23 address the committee's concerns at this point in time.

24 HONORABLE MAGISTRATE JUDGE DEIN: So why is that
25 different, though, than his request to sit down on August 15

1 and spell out exactly what you're producing, when you're
2 producing it, and what hasn't been produced?

3 MR. MUNGOVAN: I think that there's room for both,
4 Your Honor. I think that we can -- for the Oversight Board,
5 we're more than happy to sit down and have sat down with
6 Mr. Despina and the committees.

7 But what I would say is the one sensitivity that I
8 have on this relates to the agreements that the independent
9 investigator has or may have with those parties, the third
10 category, who voluntarily produced the documents. I don't
11 know what the terms of that voluntary production are.

12 And so I don't know whether there is a limitation
13 upon the independent investigator sharing with, or the
14 Oversight Board sharing with the committees the list of who
15 the producing parties are and the scope of the documents that
16 were produced with them. I just don't know what those
17 restrictions are or may be.

18 HONORABLE MAGISTRATE JUDGE DEIN: So this is my
19 problem. As I understand it from some of the papers, there's
20 been a lot of discussion about who's producing documents,
21 about who's being interviewed. I mean, all of that has been
22 discussed according to the representations, what the
23 independent investigator's doing. But then the results of the
24 interviews, the results of the document requests are not being
25 shared.

1 So I don't want to end up in August with the
2 beginning of a fight over what should be produced or not. The
3 report itself, assuming it comes out on August 15, and
4 assuming it identifies claims, if it hasn't allowed the
5 committee to see at least some of the substantive underlying
6 documents, then it doesn't have credibility. And then we're
7 just stalling this for another couple of months.

8 And I accept the concern of the May 2019 date. I
9 think that's real.

10 MR. MUNGOVAN: Let me address both of those points.
11 First, the May 2019 date, that's an issue for the Oversight
12 Board, at least in the Oversight Board's position and view,
13 because those claims belongs to the debtors, not to the
14 Committee.

15 And secondly, with respect to your first issue, which
16 is the concern about having a disagreement in August, the
17 disagreement is not going to come from the Oversight Board I
18 don't anticipate, Your Honor.

19 To the extent that there is any disagreement about
20 access to the documents that are in the depository relating to
21 the third category, or potentially the GDB, depending on what
22 Mr. Sushon tells us, that will be an issue between the
23 Committee, or committees, and the producing party, as to
24 whether or not the producing party's documents should be made
25 available to the committees.

1 HONORABLE MAGISTRATE JUDGE DEIN: But then I end up
2 on August 15 and I say okay, so issue a Subpoena. I mean, how
3 do we make this conversation happen without that?

4 MR. MUNGOVAN: That may be, Your Honor, but what I
5 would tell you is my understanding of the independent
6 investigator's concern is that if you mandate that -- if you
7 take the position that those documents must be turned over in
8 some way, it could interfere with that investigation.

9 And what I would say to you is that the independent
10 investigator needs to be free to pursue the path that it is
11 pursuing, unhindered by imposition by a committee to evaluate
12 the documents that the independent investigator has collected,
13 where the independent investigator has made the decision that
14 it is more expedient and more efficient and more cost
15 effective to work voluntarily with the producing parties to
16 produce documents on a voluntary basis.

17 HONORABLE MAGISTRATE JUDGE DEIN: All right. So your
18 proposal then is on August 15, we'll take that as a date there
19 would be an exit proposal that says that these are the
20 following materials that will be turned over that have not
21 been turned over as of now. These are the materials that you
22 will not have access to because I couldn't get you access to
23 it. And you, Committee, file a motion to compel or seek the
24 2004 authorization at that point.

25 MR. MUNGOVAN: Yes. I think something like that.

1 And depending on what Your Honor orders as a result of this
2 motion today, it will likely give guidance not only to the
3 committees, but also the producing parties as to what the --
4 what the most direct path is.

5 HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

6 MR. MUNGOVAN: Thank you, Your Honor.

7 MR. SUSHON: Good afternoon, Your Honor. Bill Sushon
8 from O'Melveny Myers on behalf of AAFAF.

9 I should start out by saying that we join in Mr.
10 Mungovan's arguments and we support the positions expressed by
11 the Oversight Board.

12 I want to start, if I may, by clearing up a
13 misapprehension that I believe the UCC and Retirees' Committee
14 are laboring under, which is this: The documents from GDB are
15 GDB's documents.

16 They're not AAFAF's documents, and AAFAF has done
17 nothing to interfere with sharing those documents with the
18 investigator or with the committees. AAFAF has been working
19 diligently to try to secure GDB's permission to share those
20 documents. And that has borne fruit, although maybe not the
21 fruit that everyone would have liked.

22 As of right now, the investigator is receiving
23 documents from GDB on an attorneys' eyes only basis, subject
24 to execution of an NDA that will be acceptable to GDB and the
25 investigator. I, today, while we were sitting here in court,

1 received permission from GDB to provide non-privileged
2 documents to share with the investigator, to the UCC and the
3 Retirees' Committee on an attorneys' eyes only basis, again,
4 pending execution of an NDA that's acceptable to GDB and to
5 the committees.

6 But that's all been work that AAFAF has been doing to
7 try to get cooperation and to try to get the information out
8 there, because as I've told this Court before, our position is
9 that transparency is precisely what's needed here, and we
10 support a transparent investigation.

11 HONORABLE MAGISTRATE JUDGE DEIN: So what can I do to
12 make this NDA get signed sooner rather than later?

13 MR. SUSHON: That I don't know, Your Honor, because I
14 don't represent GDB. I don't know what the issues are that
15 are creating any concerns on their part.

16 HONORABLE MAGISTRATE JUDGE DEIN: So who knows? The
17 independent investigator knows what the issues are?

18 MR. SUSHON: I don't believe so, Your Honor. I think
19 that would have to be GDB. I --

20 HONORABLE MAGISTRATE JUDGE DEIN: I'm feeling a
21 little bit like I'm chasing my tail around.

22 MR. SUSHON: I understand, Your Honor. I'm just not
23 authorized to speak on behalf of GDB, and so I can't express
24 that. But that is what we have been doing. That is what we
25 can do today so we can at least get the committees the

1 documents that the investigator has that are non-privileged.

2 They can begin reviewing those documents. It can
3 help them if they do think that there are deficiencies in
4 those document productions. It can help them then begin to
5 work on whatever follow-up request they may have. And they
6 can bring those through the investigator while the
7 investigation is ongoing.

8 If when the investigation is done they're still not
9 satisfied with the document productions, then they can take
10 whatever other steps they think are necessary to get the
11 documents that they need. But this is at least a very good
12 first step to get beyond the log jam that we've been in and to
13 get them some of what they need.

14 HONORABLE MAGISTRATE JUDGE DEIN: Just so I
15 understand, what you're saying is that the documents can be
16 produced tomorrow attorneys' eyes only, but you're --
17 somebody's negotiating a non-disclosure agreement which would
18 free up some of those documents beyond attorneys' eyes only?

19 MR. SUSHON: That's correct, Your Honor. And I
20 believe that needs to be approved by the GDB board.

21 HONORABLE MAGISTRATE JUDGE DEIN: All right. And
22 then do you know whether they're producing a privilege log?

23 MR. SUSHON: There is not a privilege log as of now,
24 but they would be, I believe, willing to produce a privilege
25 log to the UCC.

1 HONORABLE MAGISTRATE JUDGE DEIN: All right. And as
2 I understand it, the other financial institutions did produce
3 a privilege log, and the privilege log was produced to the
4 committee?

5 MR. SUSHON: I don't know the status of that.

6 MR. DESPINS: No privilege logs were produced -- was
7 produced.

8 HONORABLE MAGISTRATE JUDGE DEIN: Well, as I
9 understood -- I'm going to make you all file one brief just so
10 they all say the same thing.

11 MR. SUSHON: That could be a real punishment, Your
12 Honor.

13 HONORABLE MAGISTRATE JUDGE DEIN: I gather. I think
14 that if there's a privilege log out there, it ought to be
15 produced to the Committee.

16 MR. SUSHON: As of right now, there's not a privilege
17 log for GDB, Your Honor. That I know. But I believe that
18 they're willing to prepare and produce a privilege log.

19 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

20 MR. SUSHON: I have only one other thing to add, and
21 that's this. It wasn't raised today during argument, but in
22 the UCC's reply papers, they made insinuations about AAFAF
23 personnel and that AAFAF personnel are somehow incentive to
24 obstruct the investigation because of their prior employers
25 being potential targets of the investigation.

1 I feel obligated to say that, first of all, that's
2 completely speculative. There are no facts offered. There's
3 no evidence offered. The concern is expressed specifically
4 about --

5 HONORABLE MAGISTRATE JUDGE DEIN: Let me just suggest
6 that that's not a persuasive argument if you're not turning
7 over the documents.

8 MR. SUSHON: Well, but again, they're not AAFAF's
9 documents, Your Honor. And that's the other point, is that
10 the AAFAF executive director is named in particular, but his
11 former employer isn't GDB. His former employer is one of the
12 other banks.

13 So what possible reason he could ever have to
14 interfere with the production of GDB documents to protect some
15 other bank that's not GDB is a mystery to me. I don't
16 understand it.

17 In any event, again, AAFAF has been working very hard
18 to get this done, and will continue to do so.

19 HONORABLE MAGISTRATE JUDGE DEIN: I appreciate that.
20 What I do need to help figure out, and I will hear from
21 everybody else as well though, everybody agrees the GDB
22 documents are critical. I need to figure out how we get those
23 produced, how I get the right people in the room with
24 authority to negotiate whatever we need to negotiate.

25 And if the non-disclosure is too restrictive, I need

1 to weigh in on that and see what happens at that point. But I
2 can't have everybody in front of me saying, I'm not the one
3 that has the authority to do that. So I'm trying to figure
4 out the best way to get the right people in front of me.

5 MR. SUSHON: At this point, Your Honor, I think one
6 possibility would be simply to have a status report at the
7 next Omnibus hearing, at which point if things haven't been
8 achieved, then, you know, some relief could be considered,
9 some motion, something that would get the right people in the
10 courtroom, if necessary.

11 HONORABLE MAGISTRATE JUDGE DEIN: Okay.

12 MR. SUSHON: Thank you, Your Honor.

13 HONORABLE MAGISTRATE JUDGE DEIN: Anyone else?

14 Yes.

15 MR. DORSEY: Good afternoon, Your Honor. John Dorsey
16 of Young, Conaway, Stargatt & Taylor. I'm here on behalf of
17 Banco Popular.

18 I don't want to belabor any of the arguments that
19 have already been made. Obviously we filed our objection to
20 the motion, but I wanted to just assure the Court that we are
21 cooperating with the independent investigator.

22 We have been producing documents. Our employees have
23 been interviewed. We've been producing documents since
24 December of last year. And there's an ongoing dialogue with
25 the independent investigator. They continue to ask for

1 documents.

2 And we're in the process of reviewing additional
3 documents now that were prompted by the interviews that they
4 conducted of our employees. So we just wanted to let the
5 Court know that we are cooperating completely.

6 HONORABLE MAGISTRATE JUDGE DEIN: And as I read your
7 papers, you have no objection to those documents being turned
8 over to the committees?

9 MR. DORSEY: That's correct, Your Honor. We
10 understood they were being turned over to the committees.

11 HONORABLE MAGISTRATE JUDGE DEIN: Thank you.

12 MR. RAIFORD: Good morning, Your Honor. Landon
13 Raiford of Jenner & Block for the Retiree Committee. I think
14 the answer, as we see it, to the middle ground that we
15 advocate is require GDB today to make available to both
16 committees the documents they have made available to the
17 investigator. And to the extent they have concerns over
18 sensitive issues or attorney eyes only and that sort of stuff,
19 we already have an agreement with the investigator that
20 governs how these documents can be used and based on various
21 labels that have been placed on them.

22 It's a little frustrating to hear that for months
23 now, every time we have these discussions, it's with AAFAF
24 about these very documents. So now here today in court they
25 throw their hands up and say well, it's not us; what are we

1 supposed to do. If so, where is GDB's counsel today? Where
2 are they to explain their position if they're the only ones
3 who can push this forward?

4 We think this is some of the smoke and mirrors. We
5 have and the other committee has for weeks and months tried to
6 get an NDA agreement with AAFAF, and heaven and earth may pass
7 away, but AAFAF is never going to sign one without this Court
8 intervening.

9 So we think again, you don't have to give the UCC
10 committee or our committee full fledged authority to go pursue
11 Rule 2004 discovery. We believe that if we wait until the
12 report is issued in August, but yet we all have access to the
13 documents that were given to the investigator, and that are
14 governed by the NDA that we have already entered into with the
15 investigator, then pretty much all of these problems can be
16 resolved.

17 HONORABLE MAGISTRATE JUDGE DEIN: Do you make a
18 distinction between the third category of non-financial
19 institution documents and GDB?

20 MR. RAIFORD: We do a little, and the reason we're
21 not as concerned about the third category is because our
22 conversations with the investigator is that those documents,
23 the plan is that they will be put in a database, and that we
24 can, as soon as the report is issued, seek access to those
25 documents.

1 So we think that those -- again, things can change.
2 If I understand this presently, the way it's supposed to work
3 is those documents will be in the database and hopefully there
4 won't be a problem.

5 The problem we all admit we have is with GDB, who
6 refuses to let us see literally anything.

7 HONORABLE MAGISTRATE JUDGE DEIN: So if I need to
8 find out information from the investigator as to really what's
9 going on with whether the documents will be put in the
10 database or not, how does that happen? Who's going to
11 represent him?

12 MR. MUNGOVAN: Good afternoon, Your Honor. Timothy
13 Mungovan for the Oversight Board.

14 So I believe that the independent investigator
15 reports to the subcommittee of the Oversight Board. I've told
16 you that based on my discussions with the independent
17 investigator yesterday, or counsel for the independent
18 investigator at Kobre & Kim, that their expectation is that
19 they plan to put the documents that they have collected and
20 gathered into the document repository, a data room. And as
21 part of the exit plan, inform the Court that those documents
22 are in the repository.

23 HONORABLE MAGISTRATE JUDGE DEIN: And identify the
24 restrictions on use on those documents?

25 MR. MUNGOVAN: Meaning that the -- is the question

1 will the independent investigator identify which documents are
2 restricted in terms of use? That seems like a reasonable
3 request. I'm happy to communicate with the independent
4 investigator about that, but that seems like a reasonable
5 thing to do, or at least have segregated subrooms in the data
6 room, that these documents are available to the committees.

7 I don't think that there's any issue with respect to
8 at least two of the Puerto Rico financial institutions as that
9 term is defined. It sounds like the GDB may be worked out, or
10 hopefully.

11 And we're talking about the third category, which is
12 the non-Puerto Rico financial institutions. And I'm sure that
13 we can figure out a way to identify who those parties are and
14 the restrictions on access, so that the committees can make a
15 determination as to whether they want that information, and to
16 establish a basis to obtain it.

17 HONORABLE MAGISTRATE JUDGE DEIN: It seems to me that
18 I need to know from the investigator, one, is there any
19 problem sharing search terms and having that conversation
20 about appropriate search terms? Are there any custodians?

21 All right. I need to know the status of the
22 negotiations with GDB, and I'm not going to wait until the
23 next Omni to have any non-disclosure agreement resolved. So I
24 don't quite know the way to do it, but maybe it's the
25 investigator who needs to talk to the committees, because

1 documents -- all right. The Retiree Committee lawyer is now
2 given permission to speak, even though you're not admitted pro
3 hac vice. Thank you.

4 Is that enough?

5 LAW CLERK: And Santander.

6 HONORABLE MAGISTRATE JUDGE DEIN: All right. And
7 we'll need to hear from New York in a minute.

8 MR. MUNGOVAN: What I might suggest, Your Honor, and
9 it just occurred to me that counsel for the Retirees'
10 suggestion with respect to GDB makes sense.

11 To be clear, in my view, I don't believe that it's
12 the burden of the independent investigator to act as an
13 intermediary with respect to the terms of the NDA. I believe
14 that they're happy to facilitate that discussion between the
15 committees and GDB. But the independent investigator is doing
16 its job under the context of PROMESA.

17 To be clear, the independent investigator is also
18 aware that their ability to share at the request of the
19 Oversight Board with the committees as a matter of efficiency
20 is something that makes sense to avoid having duplicative
21 discovery. But I want to be careful with acknowledging or
22 accepting some burden on the part of the independent
23 investigator that I don't think I can do.

24 So I reiterate that maybe the path forward with
25 respect to GDB is for the committees to communicate directly

1 with GDB. Perhaps the commentary from the bench today may act
2 as a catalyst to GDB to work together with the committees to
3 come to an acceptable NDA that I'm sure will also be
4 acceptable to the independent investigator, and we can report
5 back to the Court perhaps by the end of next week.

6 HONORABLE MAGISTRATE JUDGE DEIN: Yes. I think
7 what -- I think that makes sense, but I also think I'll
8 schedule something in Boston in about two weeks -- I don't
9 have my calendar with me -- that GDB will have to be present
10 at. All right?

11 So it will be sort of the 2004 against GDB, and at
12 least I'll have the right parties there so that we can figure
13 out what to do with how fast those documents can be produced.
14 They're going to be produced. I mean, you can tell GDB that.
15 I just want to make sure they're represented and have counsel
16 at the hearing, and then we will figure out how fast to get
17 them.

18 But I accept counsel's representation that at least
19 all the documents will be available to both committees on an
20 attorneys' eyes only basis tomorrow, okay?

21 I have some nods at me.

22 MR. SUSHON: Yes, Your Honor.

23 HONORABLE MAGISTRATE JUDGE DEIN: Do we have someone
24 in New York?

25 MR. CROWELL: Yes, Your Honor. This is Nick Crowell

1 from Sidley Austin representing Santander, and I'll be very
2 brief.

3 I just wanted the Court and the parties to know that
4 Santander is fully cooperating here. It has nothing to hide.
5 It's produced tens of thousands of pages of documents. We
6 provided current and former Santander employees for
7 interviews. And I believe that all that information we
8 produced has already been made available to the UCC and the
9 Retirees' Committee of which we have NDAs.

10 We will continue to cooperate with the investigator
11 and we will probably be producing some more documents. And
12 obviously when those documents are made available to the
13 investigator, my presumption is that they'll also be made
14 available to the UCC for their guidance.

15 Thank you, Your Honor.

16 HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

17 MR. DESPINS: Your Honor, just a few clarifying
18 points. You have not heard a word about August 15 from
19 anyone. Just make sure that's very clear.

20 That date, I've had to put some money on it, is not
21 happening. I hope I'm wrong, but you have not heard a word
22 about that, and that was not an accident.

23 And on the issue of we have not raised the search
24 term, it's on page eight of our Reply. We had various e-mail
25 communications with the investigator asking for search terms,

1 so that issue has been front and center for a long time.

2 Then the issue of -- you know, Mr. Sushon is playing
3 a very dangerous game. He has been negotiating with us the
4 terms of that NDA for the last four months. That is illusory.
5 I have e-mails going back and forth between me and him and
6 Mr. Friedman negotiating the terms of that GDB, and now he
7 says oh, we don't represent them.

8 By the way, why is there not a default judgment
9 against GDB? Because we filed a motion. They're not here.
10 Let's get the default judgment entered. I mean, this is, Your
11 Honor, very troubling.

12 HONORABLE MAGISTRATE JUDGE DEIN: So does it make
13 sense then to have a continuation of the hearing with GDB
14 present, and we just at that point wrap that up?

15 Mr. DESPINS: Yes. And if they're not there, then
16 whatever happens with that. But the next point, Your Honor,
17 is the other parties. And they're saying, well, we haven't
18 filed a motion about that. We can do that.

19 We can also serve a Subpoena on the investigator
20 saying produce all the documents you've received. And then he
21 can come to Court saying, I can't do that; I have a
22 confidentiality agreement. And then Your Honor will resolve
23 that.

24 I can't believe that's the game we're playing,
25 because we have filed the motion, so -- there are other

1 entities, and by the way, they're numerous. They're big banks
2 in New York that were involved in this. And they're saying,
3 well, we're not going to give you those documents because
4 that's not covered by your motion.

5 The state is paying for that investigation. We
6 should have access to it. And if the third parties are
7 opposed to that, they can come to the Court and explain why we
8 should not have access to those documents.

9 And by the way, the fact that that would interfere
10 with their investigation, Judge, we're talking about
11 documents, not witnesses. So how is it that us seeing the
12 documents will interfere with the investigator's
13 investigation? We just don't see it.

14 But all in favor of keeping this on a short leash,
15 that's the only way this is going to move forward.

16 MR. MUNGOVAN: Your Honor, two things. First of all,
17 with respect to the scope of the motion, I'm just responding
18 to the motion as written with respect to the third category of
19 documents. We're responding to the motion as written.

20 If the committee wants to seek categories of
21 documents from third parties, I think we've laid out a process
22 for them to get access to those documents. Let's be
23 practical.

24 And then with respect to the search terms, I was
25 reviewing e-mail that I had received over the weekend in my

1 folder. And what the note that I have from my team states is
2 that the independent investigator invited the committee to
3 provide proposed search terms for Popular and Santander, and
4 expressed a willingness to pose such search terms to these
5 witnesses. The Committee never provided such terms.

6 So that's not necessarily responsive to the criticism
7 that has been levied now with respect to what search terms
8 were, in fact, used. It's a fair point, Your Honor.

9 I will go back. I will talk to the independent
10 investigator about that. I hear you loud and clear that you
11 want, if possible, those search terms to be shared and the
12 custodians. If there is a problem with doing that, I will
13 report back.

14 HONORABLE MAGISTRATE JUDGE DEIN: Okay. So why don't
15 we say within the next week, you will have that conversation
16 and somebody will file a status report with me to let me know.
17 I guess you will.

18 MR. MUNGOVAN: (Nodding head up and down.)

19 HONORABLE MAGISTRATE JUDGE DEIN: To let me know what
20 the status of that is. I also want to know the status of this
21 third category. Are there really -- I don't know what the
22 agreements are. Are the agreements -- I guess by August 15,
23 I'm using that date, you're going to have to convince me it's
24 wrong, if it's wrong.

25 But by August 15, the committees need to know what's

1 in the room, what the form is. I guess the investigator needs
2 to spell out the exit plan in a filing that we can actually
3 look at.

4 MR. MUNGOVAN: That's my understanding, that there
5 will be an exit plan or an exit report that will be filed that
6 is separate from the final report. I don't know that the exit
7 report will be filed by the 15th of August.

8 I am told -- I don't have personal control over it,
9 but I am told by counsel for the independent investigator that
10 they currently anticipate, as stated in our filings, that they
11 will file a final report by August 15, 2018.

12 HONORABLE MAGISTRATE JUDGE DEIN: But I want the exit
13 plan by then.

14 MR. MUNGOVAN: You want the exit plan by the same
15 date?

16 HONORABLE MAGISTRATE JUDGE DEIN: I actually want to
17 know what's going to be in the exit plan before that, all
18 right? I want to know that there's going to be a plan that
19 says that the documents will be in a room, when access will be
20 available to them.

21 The overarching thing that I wanted to say is that
22 the Committee is going to get these documents. All right?
23 Because I'm not going to end up in a fight about whether
24 investigations are duplicative because the Committee doesn't
25 know what documents have already been produced.

1 The whole point of this was so that the financial
2 institutions didn't have to do the same searches multiple
3 times. All right? But the Committee can't be in a position
4 of saying I want these documents, and then not knowing whether
5 or not they've been produced.

6 So that's not a fight I'm willing to have. And if I
7 have to just open the doors to make sure it doesn't happen, I
8 will do that.

9 MR. MUNGOVAN: I understand, Your Honor.

10 THE COURT: All right. So I think the privilege logs
11 need to go over to the committees, to the extent they exist,
12 and there needs to be a privilege log from GDB.

13 You need to have these conversations about custodians
14 and search terms and make sure that that's done. I need to
15 know what the status is of the third category. Is it expected
16 that those documents will be released at the exit date, or is
17 it expected that they will still be confidential at that date?

18 MR. MUNGOVAN: My understanding is that they will be
19 -- to the extent that they are restricted by the producing
20 party, they will be held as confidential. The independent
21 investigator will be withdrawing, as I understand it, subject
22 to the exit plan. And the Oversight Board presumably will
23 have control over those documents.

24 But my understanding is that there will be -- at
25 least in some instances, as of today, there are restrictions.

1 Whether those producing parties lift those restrictions
2 voluntarily remains to be seen.

3 HONORABLE MAGISTRATE JUDGE DEIN: Is there any
4 concern that you have about disclosing the identity of the
5 parties that have produced the documents?

6 MR. MUNGOVAN: I don't --

7 HONORABLE MAGISTRATE JUDGE DEIN: That is something
8 that you need to talk to the investigator --

9 MR. MUNGOVAN: I don't know, Your Honor. Yes, let me
10 speak with the investigator's counsel. I don't know. To some
11 degree, I'm in a difficult position, to be honest with you,
12 because I'm functioning frankly as an intermediary as well.
13 But I'm trying to be as direct and honest with you as I can.

14 I don't know whether that is information that can be
15 shared. If it can be, I will work to make that clear to you
16 and to the committees.

17 HONORABLE MAGISTRATE JUDGE DEIN: All right. So I
18 think the way that we're leaving this is you'll have the
19 conversation with the investigator and with the committees and
20 file a status report in the next week. Does that make sense?

21 MR. MUNGOVAN: Yes, Your Honor.

22 HONORABLE MAGISTRATE JUDGE DEIN: And then in two
23 weeks, I will issue a continuation date for a hearing with GDB
24 to address those documents, all right? And then I will take
25 the remainder of it under advisement based on what I have here

1 and formulate the next steps.

2 MR. MUNGOVAN: Thank you, Your Honor.

3 HONORABLE MAGISTRATE JUDGE DEIN: The goal will be,
4 though, that this is moving. Okay? And that the documents
5 will be reviewed.

6 On the other side, though, when we get to the I want
7 more stage, which I know will come, that's actually going to
8 have to be fairly identified as to what's needed, why, and
9 probably some budget on what the additional search will
10 involve. Okay? And I'll put that in an Order as I finalize
11 this.

12 But that's going to -- assuming that the committees
13 get all of the materials that have been -- or substantially
14 all the materials that have been produced, the more the
15 investigation is going to have to be targeted. Okay?

16 And again, I understand that there may be very
17 different goals in the investigation, and I don't have a
18 problem with different goals, but I think there is a finite
19 world of information that people will use differently.

20 So the fact that the investigator's goals may be
21 different doesn't mean that an entirely new search takes
22 place, if the same documents have been produced, and just
23 focus -- the focus of the documents are different. Okay?
24 Does that make sense?

25 I have sort of some nods on that note.

1 MR. SUSHON: (Nodding head up and down.)

2 MR. ROSEN: (Nodding head up and down.)

3 HONORABLE MAGISTRATE JUDGE DEIN: And I think I
4 should leave.

5 Is there anything else?

6 MR. SUSHON: (Shaking head from side to side.)

7 HONORABLE MAGISTRATE JUDGE DEIN: Okay. Thank you.

8 (At 2:10 PM, the Honorable U.S. District Court Judge
9 Swain took the bench.)

10 THE COURT: Please be seated.

11 Our final contested agenda item is the joint
12 application for entry of an Order amending the Interim
13 Compensation Order.

14 Mr. Sushon.

15 MR. SUSHON: Good morning, Your Honor. Bill Sushon
16 of O'Melveny & Myers for AAFAF.

17 I'm happy to report that I think we can move this to
18 the uncontested category. And I'll explain that in a moment,
19 but first I thought it would be helpful to get some background
20 on the reasons behind the proposed amendments.

21 Aside from housekeeping issues, the proposed
22 amendments are designed primarily to ensure that people
23 seeking payment from the Puerto Rico Government Treasury are
24 complying with Puerto Rico law.

25 The reason for that isn't that we think that the

1 Court's Order is insufficient to require payment to the
2 professionals. It's really because we have taken to heart the
3 concerns that have been expressed over the timing of payments
4 and of payments being delayed.

5 Everyone has experienced delays in payments,
6 including my firm, you know, some of them very lengthy. And a
7 big part of the reason for that, Your Honor, has been that the
8 Treasury, when it is processing payment requests from
9 professionals, has policies, procedures and systems that are
10 set up to ensure compliance with Puerto Rico law, because the
11 payments have to be made typically in compliance with Puerto
12 Rico law.

13 So as soon as you have a situation where there's a
14 variation from what is typically done in Puerto Rico, that
15 requires people to understand the reasons behind it, to get
16 themselves comfortable with it, for the employees to feel
17 comfortable that they're not going to be subject to criminal
18 prosecution for processing a payment that doesn't check the
19 boxes for Puerto Rico law.

20 We also think that providing the things complying
21 with Puerto Rico law provides greater transparency. Given
22 that these payments are coming from Puerto Rico's Treasury, we
23 believe that the taxpayers and the people have a right to
24 transparency to see the arrangements that are in place and so
25 on. So that is what motivated the amendments.

1 We had one objection from the UCC professionals, and
2 I believe that we have resolved their concerns in this way.
3 There was a concern about tax withholding, and that all of
4 their payments would be subject to automatic tax withholding
5 by Puerto Rico.

6 There is a process that -- we've spoken to the IRS.
7 There is a process that allows anyone who's making an
8 application for payment from the government, or to any other
9 part of the government, to certify to the payor that they are
10 not doing business -- the person seeking payment is not doing
11 business in Puerto Rico, at which point the payor no longer
12 has the obligation to withhold Puerto Rico tax.

13 So that would eliminate any withholding from the
14 professionals' payments. The professionals could still be
15 liable for tax. That's on them. They need to figure that out
16 with their own tax professionals.

17 But if the government gets those certifications from
18 the professionals, then there will be no tax withholding from
19 their payments. And with that, I believe that the UCC's
20 professionals will withdraw their objection.

21 THE COURT: May I just ask a question just for
22 clarification?

23 MR. SUSHON: Yes, Your Honor.

24 THE COURT: So I may have overread the objection, but
25 there also seemed to be buried in the -- well, not so buried,

1 in the objection a contention that the retention arrangements
2 entitled those professionals to be grossed up for any actual
3 tax liability. That it wasn't just a withholding issue that
4 was being raised at the end of the day, but a gross up issue.
5 Am I wrong about that or have you resolved that?

6 MR. SUSHON: That issue was raised in the objection.
7 It isn't frankly squarely implicated by the amendments to the
8 interim compensation order, which merely provides that the
9 professionals need to be in compliance with Puerto Rico tax
10 law.

11 So, you know, that's the requirement, but I'll leave
12 it to Mr. Despins to explain their position and if there is
13 any continuing objection.

14 MR. SUSHON: Thank you.

15 THE COURT: Thank you.

16 MR. DESPINS: Thank you, Your Honor. Luc Despins
17 with Paul Hastings on behalf of ourselves and Zolfo Cooper and
18 the Casillas Torres firm.

19 But we don't need to pursue that issue now, meaning
20 that we can table that. We're satisfied with that
21 representation that once we submit that certification, there
22 will be no withholding, and we remain subject to whatever tax
23 we have to pay.

24 The only clarification I would add is that they've
25 already withheld 29 percent from our fees. And so upon

1 submitting that certification, that those fees would be paid
2 promptly by the government. Subject to that, you know, I
3 think that resolves it.

4 MR. SUSHON: Your Honor, just one further
5 clarification. The certification would need to provide not
6 only that the payee is not doing business in Puerto Rico, but
7 also that the work was not performed in Puerto Rico. So it's
8 a two stage --

9 THE COURT: And so with that certification, it is
10 your expectation that it will be given retroactive effect so
11 that the monies that have previously been withheld will be
12 refunded?

13 MR. SUSHON: Yes, as long as the certification is
14 given for past payments as well as for -- when each payment is
15 sought in the future.

16 THE COURT: Very good. I thank you and congratulate
17 you for having resolved the objection to this Order.

18 And there was an amended version of the Order that
19 was filed last night that seemed to be directed to PREPA
20 professionals in particular.

21 MR. SUSHON: That's correct, Your Honor.

22 THE COURT: And Mr. Despina had raised I think in his
23 objection an issue about the literal requirement of the filing
24 of an engagement letter saying that for professionals who are
25 retained pursuant to Orders, there's not an engagement letter.

1 So this is a roundabout way of saying, am I going to
2 get another proposed amended form of the Order with tweaks to
3 deal with that sort of issue, or can I go ahead and enter the
4 Form of Order that was filed yesterday?

5 MR. SUSHON: You can enter the Form of Order that was
6 filed yesterday.

7 THE COURT: Mr. Despins, you can just nod.

8 MR. DESPINS: (Nodding head up and down.) Yes. Yes,
9 Your Honor.

10 THE COURT: All right. Mr. Despins has nodded and
11 said yes. So I will do that and I thank you.

12 MR. SUSHON: Thank you, Your Honor.

13 THE COURT: And so in items Roman V and Roman VI of
14 the agenda, the matters that are adjourned and/or carried over
15 to the July Omni are specified. And unless anyone else has an
16 issue to raise? I see no hands here or in New York.

17 So this conclude today's agenda. As of right now,
18 the next scheduled hearing date I believe is June 22nd in
19 Boston in connection with a 2004 application issue. No?

20 LAW CLERK: That one came off.

21 THE COURT: That one came off, so it's not.

22 HONORABLE MAGISTRATE JUDGE DEIN: Maybe we'll fill it
23 up again. We'll see.

24 THE COURT: Yes. It will morph into something else.

25 So as of now, we'll be back here in San Juan for the

1 next Omnibus on July 25th. And I want specifically and
2 wholeheartedly to thank the Court staff here in Puerto Rico
3 and in New York for their professionalism and all of the work
4 that they do constantly to support these proceedings, and
5 particularly the work that has been undertaken in preparation
6 and support of today's hearing.

7 I thank all of you for your presentations and
8 advocacy. I wish you all well and safe travels for those who
9 are traveling.

10 We are adjourned. Take care.

11 (At 2:19 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 138 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain and Honorable
8 United States District Court Magistrate Judge Judith Dein on
9 June 6, 2018.

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14 S/ Amy Walker

15 Amy Walker, CSR 3799

16 Official Court Reporter

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< Dates >

April 19th 7:2
April 5th 101:19
August 10 15:5
August 15 93:5,
93:9, 93:18, 94:2,
94:3, 94:23, 96:2,
96:14, 98:15,
98:18, 107:25,
109:3, 110:2,
110:18, 123:18,
126:22, 126:25
August 15, 2018
127:11
August 15th 92:21
August 24th 20:6
August 6 19:10
August, august 20:4
February 300 million
14:11
January 2018 34:18
July 25th 29:11,
137:1
July 5th 19:4, 19:6,
19:8
July 6 19:9
June 22nd 19:3,
136:18
June 28 32:13, 33:10
June 29 10:21
June 6, 2018 1:16,
5:2, 138:9
March 7th 36:24,
37:2
May 15 7:13
May 16 7:13
May 2019 95:10,
109:8, 109:11
May 28 69:18
May 29 11:1
May 29th 10:20
May 8th, 2018 18:15
May 9, 2019 95:1
May, may 17 16:12
October 2017 34:18
September 15 95:7
September 1st 96:15
\$7.86 48:11
\$7.86. 48:10
.1. 61:12

< 0 >

000 57:15

< 1 >
10 57:15, 86:11
10,000 62:11, 70:4,
77:22
103 14:2
10th 20:9, 33:15,
54:20
11 50:6, 56:10,
56:11
1102 77:13, 77:16
1102(a) (1 77:9
1102(a) (2 66:9,
66:17, 77:10
1102(a) (4 77:11
11:55 85:22
12(b) (6 28:17
12:00 85:17, 85:18
12:57 85:23
13 33:6
138 138:4
149 14:12, 14:14
15 36:21, 37:10,
103:24
150 14:9
15th 127:7
16 36:21, 37:10
17,300 11:3
17-BK-3283(LTS 1:6
17-BK-3567(LTS 1:24
18,500 62:10
18-AP-030(LTS 1:22
180 60:13, 60:17
1:00 85:18

< 2 >

2.6 16:14
2.8 11:12
20 39:15, 44:24,
49:10
2004 85:20, 86:9,
95:8, 110:24,
118:11, 122:11,
136:19

2014 99:25
2017. 12:22, 14:2
20th 7:3, 20:4
21: 2:11
240 14:8
29 134:25
2:10 131:8
2:19 137:11

< 3 >

3 70:20, 71:14
3,000 11:2
3.4 11:10
3.6 62:14
30 39:15, 47:10,
86:10
30-day 10:21
300 16:17
30th 60:23
316 54:1, 54:9,
55:22
317 54:9, 55:23
317. 54:1
3228 77:21
328 54:8
3799 138:15
38 11:8
3: 1:6, 1:22

< 4 >

40 39:15, 62:23
400 11:9
45-day 21:2
46 11:5, 11:13

< 5 >

50 16:18, 39:15
55 17:12

< 6 >

60 21:6, 24:8,
24:21, 24:22,
27:21, 29:19
60-day 21:3, 21:10
601 19:12
64 14:22

65. 21:6	105:6, 121:18, 138:5	134:2
	able 55:2, 57:16,	actuality 44:24
< 7 >	57:23, 65:12,	Actually 6:25, 8:10,
7,500 70:3	79:22, 81:9,	10:4, 13:10,
7,522 77:23	85:14, 105:24	13:13, 47:1,
	above 14:22, 43:19	59:14, 63:23,
	Absolutely 9:25,	71:13, 81:17,
< 8 >	63:24, 69:16	88:13, 89:1, 93:8,
8.25 62:17	accelerated 30:15,	127:2, 127:16,
82 14:2	31:1	130:7
87 14:4	acceleration 24:17	actuarial 80:5
	accept 109:8, 122:18	actuaries 78:18
	acceptable 10:1,	Ad 2:33, 16:19
< 9 >	10:2, 33:19,	add 26:15, 34:2,
9 70:20, 71:14,	111:24, 112:4,	46:14, 46:15,
76:21	122:3, 122:4	57:4, 81:18,
90 14:1, 29:19	accepting 121:22	114:20, 134:24
905 17:23	access 14:7, 40:20,	added 15:24
99 13:25	89:1, 107:6,	adding 74:16
9:39 5:3	109:20, 110:22,	addition 17:3, 66:5
	118:12, 118:24,	additional 10:23,
	120:14, 125:6,	11:11, 11:12,
< A >	125:8, 125:22,	12:7, 13:2, 15:3,
a) (1 80:19	127:19	16:18, 36:4,
a) (2 79:16, 81:7	accident 123:22	36:14, 45:10,
a) (4 66:9, 66:17,	accompanied 31:17	46:23, 71:19,
79:17, 81:7	accomplish 105:24	72:2, 72:3, 74:2,
AAFAF 11:22, 12:9,	accordance 60:25	77:11, 92:22,
13:21, 16:9,	according 108:22	92:24, 117:2,
16:11, 18:24,	account 22:19	130:9
25:7, 26:9, 30:24,	accounts 100:13	address 13:5, 21:17,
41:24, 59:13,	accrued 36:13, 63:2	22:24, 23:11,
67:16, 70:25,	accurate 138:5	25:4, 36:19,
90:9, 99:10,	achieved 116:8	41:21, 50:1,
105:1, 105:8,	acknowledged 30:19	61:25, 100:25,
111:8, 111:16,	acknowledging 121:21	101:10, 107:23,
111:18, 112:6,	acknowledgment 6:18	109:10, 129:24
114:22, 114:23,	acronym 68:2	addressed 18:20,
115:8, 115:10,	Act 17:14, 17:17,	21:19, 24:18,
115:17, 117:23,	18:14, 96:1,	39:8, 42:9, 52:14,
118:6, 118:7,	121:12, 122:1	71:4, 99:14
131:16	action 14:16, 78:10	addressing 58:12,
abeyance 32:4	actions 59:17, 78:15	75:20
abide 70:11	actively 14:24,	adds 16:1
ability 53:25,	27:17	adequate 62:1, 62:7,
55:25, 58:1, 60:6,	activities 43:18	63:9, 65:21, 67:5,
60:23, 70:15,	activity 38:21	73:13, 77:14,
75:21, 75:22,	actors 87:13, 87:16	77:16, 81:4
101:3, 105:5,	actual 44:21, 81:2,	adequately 66:19,
		78:3, 84:5

adhere 42:22
adjourned 136:14,
137:10
adjudication 20:19
adjusted 45:20
adjustment 7:12,
9:11, 12:10,
12:16, 27:20,
48:10, 59:23,
72:23
adjustments 8:11
Administered 1:11
administrative
11:19, 40:19
admit 101:23, 119:5
admitted 121:2
adopt 69:7
ADR 12:6
advance 14:15,
22:11, 43:25, 44:4
adversary 22:18
advice 78:10
advisement 129:25
advisors 27:16,
71:22, 78:18
Advisory 2:21, 2:29
advocacy 137:8
advocate 117:15
affect 25:15
afternoon 29:23,
61:13, 61:17,
85:25, 86:7,
100:21, 111:7,
116:15, 119:12
Agency 2:20, 2:28
agenda 22:2, 34:10,
59:9, 61:12,
131:11, 136:14,
136:17
Agent 2:38, 9:24,
10:1, 10:6, 10:8,
13:21, 24:10,
50:16, 59:13
agents 9:5, 12:1
ago 24:24, 34:20,
69:18, 96:4, 99:7,
103:25
agree 22:8, 38:3,
64:10, 65:23,
66:5, 67:2, 90:4

agreed 13:2, 29:15,
58:13, 91:18,
105:10
agreeing 91:20
agreement 29:12,
76:25, 93:15,
105:8, 113:17,
117:19, 118:6,
120:23, 124:22
agreements 108:8,
126:22
agrees 115:21
ahead 50:20, 71:13,
96:9, 136:3
air 43:8
al 1:16, 1:31, 2:5
Albeniz 2:48
alert 65:8, 70:18
alerted 68:21
algorithmic 57:20
allegedly 95:23
alleging 78:3
allocated 49:11
allow 7:1, 8:25,
9:8, 10:25, 12:11,
18:7, 38:5, 107:20
allowed 7:14, 8:8,
95:19, 109:4
allowing 107:14
allows 133:7
alluded 49:24
alluding 71:3
almost 49:16, 57:20,
96:15
already 5:22, 27:17,
46:6, 60:10,
70:24, 71:4,
94:21, 116:19,
117:19, 118:14,
123:8, 127:25,
134:25
alternative 96:9
alternatives 94:5
although 22:2,
28:12, 56:7,
111:20
amend 37:3, 49:9
amended 12:23,
17:25, 18:16,
67:5, 135:18,

136:2
amending 131:12
amendment 17:2, 18:7
amendments 12:23,
18:12, 18:13,
131:20, 131:22,
132:25, 134:7
among 35:11, 48:7,
57:3, 62:15, 68:10
amount 16:15, 17:12,
17:22, 47:3, 54:24
amounts 45:20
Amy 138:14, 138:15
analysis 7:6, 43:2,
53:2, 56:20, 81:5,
81:8
analyze 81:4
and/or 29:25, 67:3,
136:14
Andrew 2:47, 28:2
angles 72:22
announcement 9:3,
42:11
annual 15:12
annually 15:13
answer 35:20, 47:16,
48:11, 48:12,
81:17, 117:14
anticipate 15:3,
20:18, 22:6,
27:20, 31:8,
107:2, 109:18,
127:10
anticipating 12:15,
35:25
anticipation 20:19
anybody 30:3, 49:15,
85:15
anyway 56:16, 92:8,
93:13
apologize 8:17,
83:5, 104:3
apparent 103:23
apparently 90:4
appealed 39:25
appear 20:2
appearance 12:5,
80:8
APPEARANCES 2:1, 3:3
appeared 62:4,

104:11
appears 42:9
applaud 9:4
applicants 34:23,
35:12
application 32:23,
34:22, 35:25,
39:4, 39:14,
41:17, 55:4,
56:14, 58:19,
60:24, 83:1,
131:12, 133:8,
136:19
applications 34:17,
35:14, 38:14,
38:23, 41:12,
45:21, 51:7,
51:22, 52:7, 58:21
applies 56:7
apply 42:18, 43:4,
53:21
applying 47:23
appoint 63:18,
65:25, 66:8,
66:18, 68:21,
69:2, 69:5, 77:7,
78:24, 80:18,
81:9, 83:3, 84:18
appointed 50:17,
65:12, 67:3,
67:21, 67:22,
73:12, 74:18,
74:19, 83:15,
96:15
appointing 50:1,
64:12, 65:1
appointment 50:15,
61:25, 64:11,
67:7, 75:17,
75:24, 80:15,
81:7, 82:11
appointments 67:12,
79:18
appreciate 36:13,
58:6, 115:19
approach 12:11,
20:10
approached 87:12
approaching 87:11
appropriate 12:13,

19:18, 21:10,
22:1, 22:7, 26:13,
37:14, 38:5,
41:17, 57:9, 58:9,
60:8, 60:18,
65:13, 68:20,
120:20
appropriately 16:3,
55:8
approval 6:15,
12:16, 16:12,
18:15, 18:22,
20:1, 35:14, 45:19
approve 19:22, 54:7
approved 37:18,
40:15, 113:20
approximately 11:2,
11:3, 11:5, 11:9,
11:24, 14:4,
16:14, 16:15,
17:11, 62:10
April 62:12, 66:24,
87:9, 93:14
arbitrarily 51:19
arguably 71:16
argue 25:6, 51:16,
81:22
argued 28:12
argument 28:11,
29:13, 29:14,
29:18, 38:22,
71:10, 96:11,
114:21, 115:6
arguments 34:3,
38:4, 86:14,
101:1, 111:10,
116:18
arise 48:10
arises 43:3
Army 15:15
arose 39:9
around 31:5, 73:9,
95:2, 105:18,
112:21
arrangements 49:9,
54:7, 132:24,
134:1
ARRIBAS 2:11, 79:3,
79:6, 79:10,
80:13, 80:22,

81:12, 83:16,
85:10
Article 70:20,
71:14, 76:21,
86:25
articulate 43:10,
69:11
articulated 42:24,
64:5, 103:18
articulating 73:7
articulation 31:18
Arturo 2:24
Aside 99:20, 131:21
aspects 43:11, 95:8
aspirational 30:15,
32:14
assembled 46:18,
101:6
asserts 101:13
assess 14:23
asset 17:19
assets 62:17, 63:4,
76:15
assist 11:23
assistance 40:1
ASSISTANT 79:3,
79:6, 79:7, 79:10,
80:13, 80:22,
81:12, 83:16,
85:10, 89:20
associated 13:5,
74:6
associations 68:8,
68:16, 69:20,
69:21, 70:3, 70:5
assume 6:20, 15:20,
26:11
assuming 20:14,
75:21, 95:18,
98:17, 109:3,
109:4, 130:12
assumption 19:21,
20:17, 62:16,
62:20
assumptions 80:5
assurance 55:22
assure 85:11, 116:20
attach 68:14
attached 70:14,
77:21, 87:8

attaches 70:13
attempt 37:15,
51:19, 56:8
attend 43:17
attendance 36:11,
41:22, 42:10,
42:12, 42:13,
42:20, 43:13,
46:6, 48:14, 51:25
attended 23:19, 85:7
attending 5:14
attention 49:4
attorney 117:18
attorneys 78:17,
105:3, 105:4,
105:15, 111:23,
112:3, 113:16,
113:18, 122:20
attributable 44:25
audible 5:23
auditors 71:23
August 97:18, 98:2,
99:4, 101:4,
107:17, 107:18,
109:1, 109:16,
118:12, 127:7
AUST 2:11
Austin 123:1
Authority 1:30,
2:21, 2:23, 2:29,
17:15, 52:6, 54:6,
62:2, 65:24,
70:21, 74:14,
77:8, 115:24,
116:3, 118:10
authorization 110:24
authorized 112:23
automatic 60:7,
133:4
available 14:7,
14:14, 20:5,
23:25, 27:22,
99:2, 99:3, 107:5,
107:8, 107:19,
109:25, 117:15,
117:16, 120:6,
122:19, 123:8,
123:12, 123:14,
127:20
avenues 102:5

average 14:21
avoid 36:9, 36:10,
51:20, 60:21,
61:1, 87:15,
121:20
awaiting 18:15
aware 8:3, 8:18,
10:19, 12:20,
26:5, 35:17,
44:11, 69:22,
70:1, 71:22,
121:18
away 95:1, 118:7

< B >
back 5:8, 12:12,
14:3, 19:10,
31:10, 32:20,
46:19, 58:1, 60:5,
73:9, 85:4, 90:6,
95:7, 97:9, 101:4,
104:20, 122:5,
124:5, 126:9,
126:13, 136:25
backdrop 8:16
background 86:22,
131:19
backing 36:24
backlog 39:7
bad 87:13, 87:16
balance 14:8, 76:16
balloon 48:25
ballots 19:6
Banco 3:6, 89:5,
91:7, 91:17, 92:4,
92:20, 97:16,
116:17
Bank 2:41, 99:22,
100:13, 115:15
banking 20:21
Bankruptcy 1:1,
24:24, 50:12,
52:23, 60:3
banks 92:9, 92:10,
96:3, 115:12,
125:1
bar 10:20
Barak 2:8
base 14:1

Based 7:22, 12:25,
62:15, 64:24,
78:7, 81:8,
117:20, 119:16,
129:25
basic 62:4
basically 75:13,
96:14
basis 17:23, 20:20,
40:6, 42:2, 54:15,
56:17, 60:1,
103:22, 105:4,
106:11, 107:14,
107:17, 110:16,
111:23, 112:3,
120:16, 122:20
beautiful 96:7
become 84:12
becomes 84:13, 92:16
began 50:16
begin 50:9, 85:18,
113:2, 113:4
beginning 109:2
begins 51:12
behalf 6:24, 10:8,
16:9, 23:12,
27:13, 33:24,
34:13, 61:22,
78:18, 86:8,
102:14, 111:8,
112:23, 116:16,
134:17
behavior 48:7
behaviors 39:3
behind 57:5, 131:20,
132:15
belabor 116:18
believes 21:14,
21:16
belong 52:3
belongs 28:13,
109:13
below 45:5
bench 46:13, 48:3,
122:1
bench. 131:9
benchmarks 54:12,
55:2
beneath 56:13
beneficial 17:18

beneficiaries 70:3	95:15, 100:1	bullet 36:20, 41:21,
benefit 42:6, 56:20,	bore 95:12, 95:13	48:24
79:12, 80:4	boring 100:15	bunch 92:10
benefits 63:2	borne 111:20	burden 56:25, 77:12,
best 82:18, 116:4,	borrowings 14:9	77:15, 121:12,
138:5	borrows 52:23	121:22
better 47:22, 48:22,	Boston 93:12, 122:8,	burdened 59:25
73:7	136:19	buried 133:25
beyond 113:12,	bother 48:10	business 30:11,
113:18	boxes 132:19	133:10, 133:11,
Biaggi 2:30	Bradley 2:13	135:6
big 25:5, 25:20,	Brady 34:14	
87:2, 125:1, 132:7	break 49:16, 49:17,	< C >
Bill 51:24, 52:1,	49:19, 85:18,	calculable 44:20
52:2, 111:7,	85:19	calculation 62:15
131:15	breathing 7:21	calendar 34:1,
billing 14:3, 39:3,	Brian 2:7, 6:23,	49:11, 122:9
43:2, 43:19,	27:13	call 21:2, 57:21,
44:14, 44:18,	Bridge 59:9, 60:22,	75:2, 89:6, 106:18
49:10, 50:9,	61:2, 103:23,	called 17:14, 17:18,
50:13, 57:14, 59:1	104:13	87:1, 90:17
billings 44:5, 59:3	brief 23:17, 38:22,	calls 103:16
billion 11:5, 11:8,	46:3, 47:24,	candid 44:9
11:10, 11:12,	47:25, 114:9,	candor 58:6, 68:19,
11:13, 16:15,	123:2	73:15
16:16, 16:20,	briefing 29:10,	capabilities 15:9
62:14, 95:15	32:2, 34:1, 38:18,	capable 68:5, 71:21
billions 95:23	42:21, 43:23,	capped 44:20
bills 55:18	99:14, 103:15,	care 137:10
binder 89:12	104:2	careful 25:22, 36:7,
binding 93:14	briefly 25:4, 33:23,	121:21
bit 10:18, 25:13,	41:22, 59:15,	carefully 51:20
28:5, 36:2, 51:3,	69:11, 73:19	carried 136:14
59:19, 68:18,	briefs 48:6	case-by-case 43:2
80:12, 82:20,	bring 6:6, 113:6	cases 56:10, 56:11,
86:21, 112:21	bringing 11:3, 11:22	60:9, 65:18, 68:9,
blame 88:4	brings 73:9	104:12
blanket 37:16, 78:4	broader 26:3, 48:12,	cash 14:8, 14:19,
blew 93:16	48:16, 100:5,	41:5, 41:6
Block 61:21, 117:13	100:11	Casillas 134:18
Bob 55:17	broadly 51:3	CAT 3:50
body 27:18	brother 76:21	catalyst 122:2
Bolanos 2:25	bucket 52:4	categories 11:7,
bond 11:16, 16:20,	budget 14:22, 15:4,	11:14, 12:3, 50:4,
16:23, 17:10	130:9	58:10, 102:20,
bondholders 16:18,	budgets 8:4	102:24, 125:20
16:19, 76:25, 77:2	buenos 5:5	categorized 11:6
Bonds 11:7, 11:17,	building 20:18	Category 20:15,
16:23, 17:11,	built-in 55:8	56:7, 102:21,
17:12, 17:13,	Bujold 79:7	

102:22, 103:3, 103:6, 104:23, 106:2, 106:3, 106:19, 108:10, 109:21, 118:18, 118:21, 120:11, 125:18, 126:21, 128:15, 131:18 cause 38:10, 78:14, 78:19 Cavanaugh 71:23 center 90:16, 99:24, 124:1 centers 10:24 central 76:12 centrally 24:11 certain 16:24, 49:10, 57:2, 58:22, 60:9, 63:25, 68:7, 70:21, 71:1, 97:5 certainly 10:9, 29:20, 30:13, 54:2, 58:3, 62:4, 63:4, 66:16, 67:11, 67:19, 70:11, 71:4, 90:23, 91:8, 93:15 certification 8:7, 82:15, 134:21, 135:1, 135:5, 135:9, 135:13 certifications 7:5, 7:8, 7:19, 133:17 certified 7:3, 16:14, 62:12, 62:17, 63:1, 63:3 certify 44:4, 133:9, 138:4 cetera 78:18, 89:8, 94:8 challenge 26:2, 95:16, 95:24 challenged 100:1 challenging 87:17, 95:20 chambers 10:11, 35:15, 57:18 chance 37:7 change 7:22, 56:2,	56:3, 66:8, 66:12, 67:7, 119:1 changes 18:5, 45:16, 48:23, 50:1, 53:24 chaos 78:16 Chapter 50:6, 56:10, 56:11 characteristics 76:9 characterize 37:5, 50:23 charged 35:5, 38:21 charges 57:16 chase 54:13 chasing 112:21 chat 82:7 check 132:18 check-in 96:5 chiming 38:3 choice 29:1, 55:6 chronic 35:23 Circuit 8:19, 87:3 circulated 35:16 circumstances 7:22, 9:21, 13:1, 42:19, 70:22, 99:21 cities 23:18 civic 5:12 civil 59:17 claim 10:25, 11:2, 11:4, 17:20, 17:23, 19:14, 19:15, 21:14, 21:15, 23:14, 23:16, 29:1, 80:4 claiming 104:15 clarification 133:22, 134:24, 135:5 clarifies 52:5 clarify 50:19 clarifying 22:21, 123:17 clarity 39:11, 64:9, 64:22 classification 19:13, 19:14, 21:18 classified 22:13 Claudia 2:46 cleanup 37:5	clear 34:8, 41:14, 47:7, 58:19, 64:20, 68:18, 71:18, 82:6, 82:9, 83:6, 83:11, 102:10, 102:11, 121:11, 121:17, 123:19, 126:10, 129:15 clearing 111:12 Clearly 67:9, 90:11 CLERK 121:5, 136:20 clerks 10:11 client 48:5 clients 48:4 clock 94:3 close 61:16 closely 94:13 closing 89:12 CMO 60:25 co-opt 56:9 Code 50:12, 52:23, 77:9, 77:16, 99:19 COFINA 2:38, 9:11, 10:1, 10:6, 10:8, 24:1, 24:4, 24:9, 24:10, 24:14, 27:18, 50:16, 87:22 Cofina-commonwealth 9:4, 27:15 cognizant 57:1 collaborate 43:25 collaboratively 72:6 colleagues 47:5 collected 110:12, 119:19 collection 10:24 collections 14:21 colloquy 51:17 combined 36:13 combining 20:8 comes 101:18, 109:3 comfort 80:10, 83:7 comfortable 132:16, 132:17 coming 15:1, 20:11, 45:8, 45:9, 60:5, 93:9, 132:22 comma 101:25
---	--	--

comment 27:14,
36:14, 56:19
commentary 101:1,
122:1
comments 21:21,
48:2, 48:3, 57:7
Commonwealth 1:15,
2:4, 7:4, 7:24,
9:23, 14:10,
14:18, 17:20,
17:21, 17:23,
25:12, 61:23,
64:19, 74:18,
76:10, 77:21,
100:23
Commonwealth-cofina
6:10, 24:3
communicate 5:18,
120:3, 121:25
communicated 46:11,
101:17, 102:2
communicating 6:3
communication 78:10
communications 44:8,
85:15, 123:25
comparable 33:11,
76:10
compel 110:23
compelling 28:10,
29:4
Compensation 38:24,
40:4, 40:7, 40:8,
40:16, 41:2,
51:23, 131:13,
134:8
complaint 95:3
complete 19:2,
107:17
completed 8:6, 101:5
completely 69:22,
70:23, 115:2,
117:5
completes 22:23
complex 36:8, 43:5,
63:5, 84:12
complexity 15:24,
16:2
compliance 41:12,
132:10, 132:11,
134:9

complicate 41:7
complicated 53:15,
69:7
complicating 41:14
comply 77:12, 102:13
complying 131:24,
132:20
component 17:3,
35:24
components 16:22
composition 66:8,
66:12, 67:4, 67:8,
85:13
comprehensive 30:25,
102:4
comprised 106:6
compulsory 36:15
Conaway 116:16
concede 27:1
conceded 62:17
conceivable 66:16
conceivably 69:9
concept 12:10
concepts 36:19,
37:10, 47:20,
48:17
conceptual 22:3,
48:1
conceptually 54:10
concern 30:1, 30:21,
35:3, 37:22,
37:24, 38:3,
38:11, 42:9, 45:5,
45:6, 65:9, 71:17,
72:1, 72:9, 99:1,
103:11, 109:8,
109:16, 110:6,
115:3, 129:4,
133:3
concerned 33:5,
39:24, 40:2,
118:21
concerns 25:10,
35:23, 38:12,
45:10, 49:12,
71:5, 82:23,
107:23, 112:15,
117:17, 132:3,
133:2
concerted 41:25

conclude 136:17
concluded 51:18,
53:4, 56:19
concluded. 137:11
conclusion 8:7,
32:4, 33:12,
55:20, 72:18,
101:19
concrete 30:24,
45:6, 96:24
concurrent 50:8
conditioned 18:19
conducted 117:4
confer 21:22, 31:8,
44:4, 60:6, 96:3,
98:15, 98:16
conferring 92:21
confidential 43:20,
44:5, 128:17,
128:20
confidentiality
35:2, 35:5, 35:10,
124:22
configuration 66:3
confirm 22:5, 33:3,
87:23
confirmation 21:9,
32:12, 32:17,
59:22
confirmed 26:18,
87:21, 88:8
confiscation 6:5
confusion 63:13,
72:10, 72:14,
72:19, 72:21
congratulate 135:16
Congress 94:20
connection 8:21,
8:25, 22:11,
30:19, 39:17,
44:5, 57:8, 58:25,
79:24, 84:19,
84:21, 136:19
conscious 74:6
consent 76:22,
97:25, 106:16
consented 106:19
conservative 37:20
consider 9:10,
12:14, 20:8, 21:8,

45:12, 45:16,
50:1, 68:20, 70:8,
82:1
consideration 12:13,
26:14, 34:25,
36:14, 60:18
considerations 68:22
considered 12:25,
36:5, 67:1, 116:8
consistent 5:15,
64:4
consisting 138:4
consolidate 38:4,
42:1
constantly 85:12,
137:4
constituencies 5:11,
82:22
constituents 10:13,
25:2
constituted 32:11
Constitution 95:17,
100:2
constrained 105:23
construe 83:1
consultation 47:14,
58:5
consultations 31:13,
53:23
contain 94:7
containment 35:23,
36:1
contemplate 20:2
contemplates 54:11,
63:2, 63:4
content 34:4
contention 134:1
contentions 20:23
contested 21:8,
131:11
context 21:17,
21:19, 25:21,
28:7, 33:8, 33:13,
36:5, 86:23,
100:17, 121:16
contextual 54:16
continuation 124:13,
129:23
continue 7:24, 8:13,
15:1, 27:2, 27:7,

32:22, 37:12,
45:11, 46:8, 64:3,
85:13, 115:18,
116:25, 123:10
CONTINUED 3:3, 35:2,
42:17
continues 14:6,
14:23, 42:13
continuing 35:11,
134:13
contract 20:20,
44:18, 53:1, 55:7
contracts 44:13
contrary 40:13,
77:17, 94:8
contrast 64:14,
64:20, 87:6
control 36:15,
76:20, 127:8,
128:23
controversy 81:2
conversation 58:1,
110:3, 120:19,
126:15, 129:19
conversations 74:22,
118:22, 128:13
conveyed 97:2
convince 126:23
Cooper 134:17
cooperate 123:10
cooperating 116:21,
117:5, 123:4
cooperation 47:13,
112:7
cooperative 48:7
coordinating 15:15
copies 100:13
corner 95:2
corollary 22:15
corporation 17:16
corporations 17:4
Corps 15:15
Correct 9:2, 15:23,
20:17, 21:13,
22:20, 41:1, 41:3,
66:13, 67:19,
87:24, 97:2, 97:3,
97:23, 98:3,
113:19, 117:9,
135:21

cost 35:23, 36:1,
36:15, 37:19,
38:9, 44:20,
56:20, 57:2,
78:20, 110:14
cost-control 43:4
costs 44:21, 45:8,
74:6
Counsel 5:5, 27:25,
33:4, 34:21, 40:1,
41:24, 48:4,
51:22, 68:12,
71:21, 75:3, 76:3,
76:21, 90:9,
99:10, 102:2,
118:1, 119:17,
121:9, 122:15,
122:18, 127:9,
129:10
count 92:4
couple 35:1, 36:25,
37:1, 37:18,
47:19, 107:11,
109:7
Couret 2:48
course 5:13, 6:13,
10:13, 24:10,
56:10, 56:12,
65:7, 78:10, 89:6,
92:24, 93:20
courtroom 5:17, 6:4,
6:7, 13:5, 69:13,
116:10
cover 58:10, 58:22,
59:2, 61:3, 70:3,
86:20
covered 23:2, 80:16,
125:4
covering 34:17
create 37:19, 63:5,
68:19, 70:17
created 57:9, 107:2
creating 53:15,
112:15
credibility 109:6
credit 16:18
creditor 21:15
Creditors 2:17,
7:16, 8:9, 9:1,
12:8, 18:9, 24:10,

26:21, 26:22,
26:25, 27:18,
28:19, 37:25,
64:15, 64:17,
64:18, 67:17,
84:4, 95:23
criminal 132:17
crisis 89:21, 90:15
criteria 81:3
critical 90:19,
98:11, 99:1,
115:22
criticism 126:6
Crowell 3:9, 122:25
crushing 77:25
crystal 102:11
CSR 138:15
cued 60:25
culmination 7:5
current 14:9, 15:4,
15:5, 17:10,
36:13, 60:1,
63:20, 77:22,
87:1, 97:13,
104:25, 123:6
currently 8:5, 13:3,
14:19, 18:14,
127:10
custodial 89:9,
89:12
custodians 89:18,
91:4, 91:5, 97:5,
97:6, 103:12,
103:22, 120:20,
126:12, 128:13
customer 14:1
customers 14:5
cut 54:13, 63:2,
100:15
cycle 36:25, 38:18,
42:5, 49:25

< D >

d) (1 80:19
d) (2 79:16
daily 42:2, 60:1
damage 15:25
dangerous 124:3
dangling 66:14

dark 55:5
data 54:22, 119:20,
120:5
database 118:23,
119:3, 119:10
date 10:20, 14:17,
19:20, 19:21,
20:1, 32:14,
33:15, 34:25,
50:7, 50:9, 50:13,
50:14, 61:2,
109:8, 109:11,
110:18, 123:20,
126:23, 127:15,
128:16, 128:17,
129:23, 136:18
dates 9:13, 10:8,
18:2, 18:25
Day 19:7, 20:6,
27:21, 72:23,
73:5, 89:18, 134:4
day-to-day 60:2
days 7:17, 24:8,
24:21, 24:22,
27:21, 29:19,
60:14, 60:17,
69:18
de 3:6, 45:4, 52:15,
52:16, 52:19,
56:7, 57:11, 59:1
deadline 9:15, 9:25,
14:15, 39:13,
94:24, 95:10
deadlines 9:25
deal 20:7, 53:16,
55:14, 89:7,
89:12, 100:10,
136:3
dealing 87:16
dealt 16:3, 40:18
debate 26:6
debating 91:2
Debt 17:15, 25:14,
90:16, 94:19,
95:16, 95:17,
100:2
Debtors 1:18, 7:7,
23:7, 23:10,
25:15, 100:23,
109:13

December 116:24
decide 29:14, 30:8,
32:2, 73:2, 73:13,
81:9
decided 29:19,
63:18, 76:24,
80:18
decides 81:8
deciding 25:13,
25:15
decision 8:20, 8:21,
28:16, 30:15,
68:25, 69:1,
70:18, 80:25,
110:13
decisions 8:20,
31:6, 48:5, 48:6
declined 77:7
declining 65:25
deemed 65:13
deems 37:14
default 124:8,
124:10
Defendants 1:33
defer 10:17, 13:13,
65:3, 105:19
deferral 45:20
deferred 39:1, 45:22
deferring 55:6
deficiencies 113:3
defined 120:9
definitive 9:9
degree 102:24,
129:11
delay 18:3
delayed 132:4
delays 78:19, 132:5
delegate 54:5
deliberative 80:20
deliverables 54:25
demands 57:13
demonstrable 44:21
demonstrated 44:25
demonstrative 46:19
denial 6:6
denied 58:24, 83:3,
101:3
denying 31:23,
82:25, 83:21
depending 109:21,

111:1
deposit 16:24,
16:25, 17:16,
18:10
depositor 25:12
depositors 18:4,
18:11, 100:15
depository 109:20
deposits 17:4,
17:21, 17:22, 18:8
describe 103:3
described 25:11,
25:20, 26:4
deserve 6:18
designation 74:10
designed 131:22
desire 67:23
detail 37:24
detailed 57:4, 57:14
details 90:2
determination 22:12,
22:15, 30:20,
120:15
determinations 41:2,
53:25, 58:9, 60:8
determine 19:11,
38:19, 40:21,
44:2, 46:20,
51:19, 63:11,
65:11, 67:3, 67:10
Detroit 72:12, 72:13
develop 12:9, 57:19,
83:4
developed 105:10
Development 2:41,
6:11, 7:6, 7:12,
54:19, 82:15
developments 34:25
device 5:21, 5:22,
6:3, 6:6
devices 5:17, 5:20,
6:6
devote 57:14
dialogue 7:24, 8:10,
46:7, 116:24
dias 5:5
Diaz 2:24
dictating 37:16
differ 80:6
difference 46:21

differences 78:8
different 15:21,
47:15, 59:19,
63:21, 72:15,
72:16, 72:20,
72:21, 72:22,
76:17, 87:12,
88:25, 107:25,
130:17, 130:18,
130:21, 130:23
differently 88:19,
130:19
difficult 83:24,
129:11
Digest 94:18, 98:19
digesting 42:3
dilemma 53:18
diligently 111:19
direct 41:9, 65:25,
66:7, 66:11, 69:2,
69:4, 84:24,
84:25, 111:4,
129:13
directed 48:3,
66:17, 89:22,
106:5, 135:19
directing 31:22,
65:24
direction 83:2
directly 26:8,
38:16, 102:2,
121:25
director 115:10
directors 25:17
disagree 29:3, 56:4,
74:21
disagreement 71:8,
103:23, 109:16,
109:17, 109:19
disbursements 32:23
disclosing 129:4
disclosure 6:15,
44:17
disconnected 64:2
discounting 62:23
discovery 12:11,
20:19, 21:8, 21:9,
21:11, 21:24,
22:7, 22:10,
28:20, 29:15,

29:17, 30:18,
95:4, 99:11,
100:9, 118:11,
121:21
discrete 21:24,
56:18
discretionary 77:8
discuss 33:25,
37:12, 37:23,
46:8, 103:21
discussed 23:13,
35:11, 56:21,
58:15, 108:22
discussing 34:1
discussion 7:10,
10:18, 25:7,
33:19, 36:17,
41:9, 49:14,
49:16, 51:25,
53:11, 53:18,
94:12, 95:22,
98:23, 102:5,
108:20, 121:14
discussions 8:8,
9:1, 12:22, 22:7,
26:9, 26:21, 27:7,
27:17, 30:24,
41:23, 45:3,
45:12, 45:13,
52:21, 53:3,
55:12, 55:15,
64:24, 117:23,
119:16
Dismiss 28:13, 32:3
dispute 6:10, 6:15,
9:4, 22:9, 24:4,
27:4, 27:15, 71:7
disputes 78:9
disruption 18:2
disruptive 78:7
disseminating 42:3
dissolution 76:23
distinction 118:18
District 1:3, 1:38,
1:40, 131:8,
138:1, 138:2,
138:7, 138:8
divert 33:6
divided 86:6
Docket 1:6, 1:22,

42:2, 42:8, 77:21	draw 14:14	effort 10:12, 32:6,
document 19:6, 90:1,	drawdown 14:11	38:4, 41:25, 42:7,
92:2, 97:1,	drive 48:2	51:8, 51:12, 74:7,
101:12, 107:2,	driven 62:9	100:17, 106:8
107:4, 107:18,	dropped 47:3	efforts 9:5, 13:24,
108:24, 113:4,	dry 25:25, 100:15	41:7, 68:13
113:9, 119:20	Duplicate 48:14,	Ehud 2:8
documentation 6:14,	94:15	eight 47:10, 66:24,
9:9, 106:15	duplicating 94:11	123:24
documented 13:3	duplication 36:10,	Either 21:7, 22:8,
dodging 98:12	38:17, 38:19,	40:7, 41:16, 58:2,
doing 71:12, 88:4,	43:22, 46:11,	77:10, 78:23,
91:20, 96:10,	74:7, 86:20	92:12, 93:1, 93:8,
108:23, 112:6,	duplicative 78:7,	93:25, 98:18
112:24, 121:15,	121:20, 127:24	Electric 2:22, 62:2
126:12, 133:10,	during 6:4, 7:8,	electronic 5:17,
135:6	11:1, 46:22,	5:20, 44:12,
dollar 57:15	54:25, 56:14,	44:15, 44:19,
dollars 11:5, 11:8,	87:22, 114:21	46:5, 47:2
11:9, 11:10,	duty 68:19, 73:15,	eleven 49:16
11:12, 11:13,	79:17	eliminate 133:13
14:9, 16:20,	dwelt 47:23	embodied 37:3, 47:19
17:24, 33:6,	dynamics 65:17	emergency 15:8
62:14, 95:15,		Emmanuelli 76:4,
95:23		76:7, 76:8, 81:19
done 13:22, 23:10,	< E >	empanelled 87:4
25:1, 29:11, 47:3,	e-mail 123:24,	emphasize 81:20
49:3, 50:21,	125:25	Employees 61:22,
54:17, 56:5, 58:4,	e-mailing 6:3	116:22, 117:4,
67:10, 79:13,	e-mails 100:16,	123:6, 132:16
100:17, 111:16,	124:5	employer 97:13,
113:8, 115:18,	earlier 33:15, 34:5,	115:11
128:14, 132:14	90:8	employers 91:13,
doors 128:7	early 93:14	114:24
DORSEY 3:7, 116:15,	earnest 42:8	enabler 90:18
117:9	earth 118:6	enacted 17:6
doubt 104:10	easily 11:4, 11:15	encourage 38:22,
down 7:1, 14:14,	easy 57:23	41:18, 45:11
14:17, 18:21,	effect 61:7, 135:10	encouraged 47:12
23:22, 28:22,	effected 17:5	end 14:13, 29:20,
31:22, 39:1, 69:9,	effective 107:22,	38:25, 39:7,
71:7, 96:6, 99:10,	110:15	40:14, 47:25,
107:25, 108:5	effectively 106:6	48:18, 60:4,
down. 83:17, 126:18,	effectiveness 18:19	60:12, 60:16,
131:1, 131:2,	efficiency 20:11,	60:19, 61:3,
136:8	37:1, 121:19	72:23, 73:4,
dozen 48:19	efficient 22:2,	83:13, 98:23,
Dozens 23:19, 92:3	30:2, 48:17,	109:1, 110:1,
drafts 19:2	57:17, 107:22,	122:5, 127:23,
dramatic 25:18	110:14	134:4

endeavor 43:3
ended 42:5
ending 15:4
endorsed 68:8
endorsement 68:11,
68:15, 69:17,
69:21, 70:2
endorsements 70:8
ends 51:11
enforce 43:3
enforced 42:25
engage 7:24, 30:23
engaged 11:22,
27:17, 51:8, 82:14
engagement 135:24,
135:25
engagements 58:4
Engineers 15:15
enhance 53:25
enjoys 77:1
enlarge 59:16
enormously 6:10
enough 24:23, 30:9,
38:4, 48:21, 121:4
ensure 62:7, 77:13,
131:22, 132:10
enter 9:14, 31:23,
45:22, 61:3,
136:3, 136:5
entered 12:24,
64:11, 94:3,
118:14, 124:10
enters 73:25
entertain 31:5
entirely 130:21
entities 7:3, 8:12,
18:4, 25:10,
41:10, 41:15,
72:16, 91:8,
102:22, 103:7,
103:11, 125:1
entitled 29:2, 29:3,
134:2
Entity 17:13, 17:18,
17:19, 18:19,
21:13, 43:20,
65:20, 73:2,
76:13, 80:9
entrusted 78:12
Entry 35:18, 40:15,

59:9, 131:12
envision 21:6
equal 72:21
escrow 22:18
especially 37:25,
77:2
Esq 2:24, 2:30,
2:36, 2:41, 2:42
essential 47:18,
54:4, 69:11
essentially 11:13,
29:11, 32:10,
62:22
establish 77:13,
120:16
establishing 77:16
estate 74:9
et 1:16, 1:31, 2:5,
78:18, 89:7, 94:8
evaluate 110:11
evaluating 54:14
evaluation 51:21,
52:24, 55:2
event 42:21, 91:14,
115:17
events 41:22
everybody 98:25,
115:21, 116:2
Everyone 38:12,
38:21, 88:19,
93:16, 111:21,
132:5
everything 30:8,
55:9, 81:1, 88:7,
98:16
evidence 78:2, 115:3
evidentiary 20:23,
30:18, 81:21
exactly 29:16, 65:4,
108:1
exaggerating 89:20
examination 86:9
example 25:11, 51:4,
51:15, 51:24,
66:21, 99:25,
100:12
examples 100:12
exceeded 17:22,
95:17
except 92:6

exceptions 37:17
exchange 17:11
Exciting 61:19
exclusive 54:10
excuse 7:9
executed 69:18
executes 48:5
execution 24:12,
111:24, 112:4
executive 79:8,
115:10
exercise 87:20, 96:4
Exhibit 48:8
EXHIBITS 4:9
exist 56:10, 128:11
existence 26:13,
40:3, 40:4
existing 11:20,
35:9, 63:14,
67:23, 74:10,
74:24, 75:12,
83:7, 83:14
exists 63:14
exit 106:25, 107:1,
110:19, 119:21,
127:2, 127:5,
127:6, 127:12,
127:14, 127:17,
128:16, 128:22
expand 74:1, 74:15
expanded 75:13
expanding 73:25
expansion 74:10
expect 14:14, 14:25,
31:17, 34:3,
99:14, 100:7,
102:13, 105:9
expectation 59:1,
119:18, 135:10
expected 43:17,
50:22, 128:15,
128:17
expecting 43:24,
84:16, 85:5
expects 106:25
expedient 107:22,
110:14
expedite 12:2, 106:9
Expedited 12:13,
31:24

expeditious 29:9
expense 48:9
expenses 14:20,
48:13, 51:9, 77:3
experience 15:21,
54:15, 72:12
experienced 132:5
expiration 27:21
expire 94:25
expiry 61:2
explain 65:4, 103:2,
118:2, 125:7,
131:18, 134:12
explains 96:7
explanation 93:17,
105:20
explication 20:16
explicitly 63:3
exploring 14:24
exponentially 74:8
express 10:10, 35:3,
77:23, 83:22,
112:23
expressed 77:19,
83:10, 111:10,
115:3, 126:4,
132:3
extend 12:24, 59:22,
78:23
extended 10:21,
14:16, 32:16
Extension 59:10,
60:19, 60:22,
60:24
extent 20:21, 22:9,
28:25, 30:3,
36:12, 37:6, 41:6,
43:18, 44:2,
46:16, 58:22,
69:10, 73:24,
74:3, 79:21,
84:22, 94:16,
107:6, 109:19,
117:17, 128:11,
128:19
eyes 105:3, 105:4,
105:15, 111:23,
112:3, 113:16,
113:18, 117:18,
122:20

< F >

face 17:12
facile 48:11
facilitate 12:2,
121:14
facilitating 40:1
fact 12:12, 12:21,
12:22, 15:18,
51:19, 57:1, 62:9,
88:9, 91:4,
106:17, 125:9,
126:8, 130:20
factors 54:11
facts 7:22, 12:25,
65:17, 78:5,
96:24, 99:20,
115:2
fair 102:1, 126:8
fairly 82:17,
107:13, 130:8
fall 50:4
falls 20:14
familiar 24:12,
24:13, 53:7, 65:16
far 27:4, 36:13,
61:19, 73:11,
87:7, 90:25,
95:21, 97:7,
107:22
Farr 10:8
fashion 71:4
fast 122:13, 122:16
favor 125:14
feasibility 63:6
feature 14:13
features 5:23
feel 16:2, 69:10,
115:1, 132:16
feeling 86:5, 112:20
fees 36:13, 40:6,
42:5, 50:20, 52:3,
56:17, 58:13,
58:14, 134:25,
135:1
felt 63:7, 64:9
FEMA 14:7, 15:15,
51:9, 51:10
few 10:12, 18:9,

18:11, 23:12,
35:19, 36:19,
69:18, 96:24,
123:17
fight 109:2, 127:23,
128:6
figure 57:25, 90:8,
115:20, 115:22,
116:3, 120:13,
122:12, 122:16,
133:15
figures 47:3
file 19:21, 38:23,
44:1, 44:3, 49:3,
64:22, 93:25,
94:1, 94:4, 95:2,
95:3, 106:25,
110:23, 114:9,
126:16, 127:11,
129:20
files 97:14
filing 6:9, 29:23,
30:22, 34:19,
38:14, 45:14,
80:17, 127:2,
135:23
filings 44:2, 127:10
fill 136:22
final 32:7, 32:18,
32:24, 52:14,
102:6, 106:25,
127:6, 127:11,
131:11
finalize 107:18,
130:10
finalized 101:5
finally 71:25
Financial 1:9, 2:20,
2:28, 56:8, 78:17,
89:21, 90:15,
102:25, 106:5,
114:2, 120:8,
120:12, 128:1
financing 14:7,
14:25, 15:4
find 57:15, 75:22,
119:8
finding 58:8
Fine 10:9, 55:9,
69:13, 87:8,

93:17, 96:15,
96:19
finer 56:24
finger 87:20, 92:20
finish 25:3
finished 35:20
finishes 107:16
finite 130:18
firm 24:21, 44:22,
71:23, 132:6,
134:18
firms 35:3, 44:13
Fiscal 2:19, 2:27,
7:3, 7:11, 7:15,
7:21, 7:25, 8:2,
8:7, 13:21, 59:13,
62:12, 80:1, 82:15
fit 12:9, 49:25,
53:14, 57:22, 99:5
five 85:17
five-minute 49:17
fixing 15:25, 16:1
flagged 35:23, 50:18
flat 44:13, 44:18,
44:20, 44:23,
49:9, 54:7, 55:4,
56:16, 57:3, 57:8,
57:10, 58:24, 59:1
fledge 118:10
flexibility 42:18,
43:11
floated 56:21
flow 41:5, 41:6
fluid 82:17
focus 19:13, 19:17,
47:11, 48:15,
59:21, 88:12,
101:11, 130:23
foisted 74:8
folder 126:1
folks 99:18
follow 33:18, 98:11
follow-up 113:5
followed 40:9
following 6:15,
18:25, 39:14,
39:17, 86:18,
94:13, 110:20
follows 93:7
foremost 47:13

forest 48:14, 48:15,
48:16
forget 91:7, 93:12
forgot 46:14
Form 35:6, 127:1,
136:2, 136:4,
136:5
formal 8:14, 36:5,
50:5, 56:13,
58:20, 75:1, 82:11
formalized 46:9
formally 50:17
formation 50:14,
61:11, 74:4, 80:14
formed 17:13, 17:18
former 87:22, 91:13,
115:11, 123:6
forming 84:6
formulate 57:16,
130:1
formulating 45:13
formulation 8:4
forth 12:12, 18:6,
18:25, 19:20,
29:16, 38:24,
58:1, 72:6, 95:8,
124:5
forum 15:10
forward 5:9, 6:11,
7:2, 8:11, 8:25,
9:10, 19:1, 20:4,
27:18, 39:7,
46:24, 48:23,
84:12, 106:22,
118:3, 121:24,
125:15
found 6:2, 30:9
foundation 7:11
four 14:21, 16:16,
23:18, 46:3,
95:15, 124:4
fourth 17:2, 18:6
frame 8:13, 8:24,
30:14, 59:16,
62:24
framework 7:11, 22:4
frank 41:9
Frankly 26:25, 75:9,
82:18, 129:12,
134:7

free 110:10, 113:18
Friedman 124:6
front 27:10, 30:3,
30:5, 49:12,
84:19, 100:24,
104:11, 116:2,
116:4, 124:1
fruit 111:20, 111:21
frustrating 117:22
full 6:16, 7:9,
7:17, 18:7, 44:3,
45:15, 95:12,
95:13, 118:10
fully 31:16, 123:4
function 70:22,
71:14
functioning 129:12
funding 76:15, 78:21
funds 22:13, 32:8,
32:12, 32:17,
32:23, 33:25
future 6:6, 8:6,
42:12, 135:15
fuzzy 51:10

< G >

Gallagher 10:8
game 56:2, 56:3,
124:3, 124:24
GAO 90:13, 90:18
gap 104:13
Garcia 97:6
gather 114:13
gathered 119:20
gathering 107:16
gave 51:15, 90:25,
93:15
general 36:19, 73:14
generally 44:11,
48:13, 73:15, 95:6
Generation 14:1
gentlemen 97:12
gets 101:11, 133:17
getting 31:10,
88:13, 89:14,
90:23
Giselle 2:42, 33:23
gist 67:20
Give 22:25, 23:13,

23:16, 74:25,
100:11, 100:13,
101:21, 111:2,
118:9, 125:3
Given 19:17, 38:20,
55:20, 57:12,
59:23, 59:24,
77:9, 80:23,
85:25, 90:24,
96:4, 96:14,
118:13, 121:2,
132:21, 135:10,
135:14
giving 96:2, 96:17,
107:10
glad 27:23, 86:2,
94:2, 94:22
goal 39:10, 56:25,
130:3
goals 8:2, 130:17,
130:18, 130:20
Godfrey 34:13
Gonzalez 97:6
GORDON 2:34, 61:14,
61:16, 61:19,
61:21, 62:20,
63:23, 64:4, 65:2,
65:6, 66:5, 66:13,
66:15, 67:14,
69:16, 73:17,
74:21, 74:22,
76:22, 80:2,
81:15, 81:17,
82:5, 83:5, 83:20,
85:9
gotten 49:1, 87:7,
92:1
govern 30:20
governed 118:14
Government 2:40,
5:10, 7:7, 7:16,
8:1, 11:19, 14:16,
76:12, 131:23,
133:8, 133:9,
133:17, 135:2
governmental 25:10,
30:12, 90:14
Governor 25:19,
87:1, 87:22, 90:17
governs 117:20

grand 87:3, 87:4
grant 45:19, 92:19
granted 58:19
granting 93:4
grateful 20:16,
79:22
gratitude 10:10
great 6:11
greater 31:9, 132:21
greatly 12:2, 17:1
Greenberg 13:14,
13:20, 59:13
gross 134:4
grossed 134:2
ground 54:5, 117:14
group 16:17, 16:19,
25:15, 75:10,
75:15, 84:4,
95:23, 102:24
grouped 102:19
grumbling 39:19
guarantee 76:16
guess 32:16, 84:10,
126:17, 126:22,
127:1
guidance 93:15,
111:2, 123:14
guideline 42:23,
93:16
guidelines 42:16,
43:14
guilty 88:3
guys 95:5

< H >
hac 121:3
half 16:16
hand 16:2
handled 39:7
hands 55:13, 117:25,
136:16
happen 30:14, 38:25,
69:9, 92:19,
93:19, 95:21,
110:3, 119:10,
128:7
happened 87:5
happening 123:21
happens 116:1,

124:16
happy 37:12, 37:23,
89:15, 101:7,
103:20, 104:13,
104:18, 104:19,
108:5, 120:3,
121:14, 131:17
harbor 57:21
hard 10:14, 38:20,
47:16, 84:13,
105:17, 115:17
Hastings 12:8, 75:7,
86:8, 134:17
HAYES 61:5
HAYNES 2:23, 13:13,
13:17, 13:18,
13:20, 15:12,
15:23, 16:5,
59:11, 59:12, 61:8
head 83:17, 105:18,
126:18, 131:1,
131:2, 131:6,
136:8
hear 22:3, 22:6,
27:23, 29:13,
29:22, 34:3, 36:2,
41:17, 41:18,
43:9, 47:15, 57:6,
69:12, 86:3, 88:6,
90:9, 98:25,
115:20, 117:22,
121:7, 126:10
heard 6:17, 7:10,
8:19, 10:6, 28:11,
28:18, 28:19,
28:23, 29:3, 29:5,
29:9, 32:19, 33:4,
52:10, 73:19,
90:20, 94:12,
97:9, 103:24,
123:18, 123:21
HEARING 1:37, 5:9,
5:13, 5:24, 20:8,
21:9, 22:11,
22:12, 28:21,
36:24, 39:19,
42:10, 42:22,
51:25, 81:22,
116:7, 122:16,
124:13, 129:23,

136:18, 137:6
hearings 7:9, 20:2,
20:5, 36:11, 42:13
heart 36:12, 132:2
heaven 118:6
Hector 2:36
heightened 45:5,
45:7
held 34:24, 128:20
Hello 49:22, 49:23,
59:12
help 71:20, 80:11,
104:13, 113:3,
113:4, 115:20
helpful 46:17,
58:18, 72:8,
72:22, 131:19
hide 123:4
higher 62:21, 62:25
highly 36:8
Highways 1:29
hinge 52:24
hired 55:6, 65:15,
71:19
Hoc 2:33, 16:19
hold 16:19, 32:4,
64:1, 78:1, 96:20
holdback 38:10,
39:15, 40:24
holding 18:10, 20:2
home 48:2
honest 129:11,
129:13
honestly 57:12
hope 24:23, 41:11,
47:19, 47:24,
74:9, 83:24,
84:11, 123:21
hopeful 8:5
hopefully 31:8,
119:3, 120:10
hoping 37:21
hosted 7:14
hour 54:20, 85:21,
86:5
hours 45:1
house 24:4
housekeeping 31:21,
50:24, 86:13,
131:21

HTA 7:4
humor 86:3
hundred 70:6
hurricane 15:9,
15:13, 15:18, 18:6
hurricanes 17:25

< I >
idea 56:21, 101:18
ideal 91:15
ideas 37:10, 43:8
identical 43:24
identified 34:22,
45:21, 60:10,
97:5, 98:20,
101:19, 130:8
identifies 109:4
identify 39:5, 70:9,
88:7, 94:7, 101:8,
101:15, 101:21,
119:23, 120:1,
120:13
identifying 54:25
identity 129:4
III(3 59:9
ilk 87:18
illusory 124:4
imagine 24:12
impact 56:8
impasse 52:21, 53:23
imperfect 47:22
implement 18:12
implementation 8:1
implemented 8:2,
24:5
implicated 134:7
important 10:14,
22:3, 46:4, 46:11,
64:9, 70:17,
86:22, 92:17,
96:21, 98:13
importantly 95:11
impose 43:23, 46:17
imposition 110:11
impression 33:24
inadequate 82:10,
85:6
incentive 45:8,
46:23, 84:2,

94:15, 114:23
incentives 37:20
inclined 60:13,
60:15
include 9:12, 12:15,
16:23, 19:5,
19:22, 22:12,
33:19, 74:2, 100:9
included 10:22,
29:1, 73:23
includes 16:17,
35:24
including 5:23,
5:25, 6:5, 19:14,
46:5, 60:1, 77:4,
132:6
incorporate 50:10
incorporated 54:8
incorporates 21:23,
35:15
incorporating 86:13
increase 78:20
increasing 45:7
incurred 44:21,
94:19
independence 70:14,
70:24
indicate 65:7,
68:10, 69:18,
70:14, 107:2
indicates 62:13,
62:14, 63:1, 68:4,
70:2, 70:20
indications 63:24,
64:6
individual 8:9, 9:1,
41:22, 69:19,
80:4, 82:23
individually 38:7
individuals 43:17,
69:19
inefficiencies 50:2,
78:19
inflection 82:13
inform 28:23, 44:7,
119:21
informal 8:15
informally 45:12
information 5:19,
7:6, 7:14, 40:21,

42:3, 45:1, 46:19, 46:23, 55:21, 106:12, 112:7, 119:8, 120:15, 123:7, 129:14, 130:19 informational 19:6 informative 18:23, 19:19 informed 106:9 initial 14:11, 28:17, 96:4 initiate 19:7, 19:9, 19:21, 85:8 initiation 19:19 input 41:8, 54:3, 54:18, 81:14 inquiries 63:25, 64:7, 84:24 insight 37:13, 56:24, 64:25 insinuations 114:22 instance 43:13, 54:19, 66:7, 67:2, 67:6, 84:17, 84:24 instance. 66:6, 69:8 instances 128:25 instantly 30:8 instead 21:14, 21:15 institution 118:19 institutions 102:25, 106:6, 114:2, 120:8, 120:12, 128:2 instruct 51:22 instruction 40:13 instructions 36:9 insufficient 132:1 insurance 14:7 intact 32:18 intend 19:7, 69:4 intended 43:10 intensity 15:22 interacting 106:12 interdependent 65:17 interest 5:6, 17:18, 23:22, 29:7, 55:8, 69:23, 72:3, 76:16, 77:5, 94:10 interested 41:24,	56:22, 87:15, 87:16, 87:20, 88:2 interests 11:24, 69:24, 72:11 interfere 110:8, 111:17, 115:14, 125:9, 125:12 Interim 34:17, 34:22, 34:24, 38:14, 38:24, 39:3, 39:14, 40:3, 40:6, 40:8, 40:25, 42:1, 49:25, 50:22, 51:7, 52:22, 131:12, 134:8 intermediary 121:13, 129:12 interrupt 19:24 intervening 11:1, 118:8 intervention 37:22, 48:6, 78:6 interventions 38:2 interviewed 11:25, 88:9, 108:21, 116:23 interviews 94:9, 108:24, 117:3, 123:7 intimately 65:16 intro 88:12 intuitively 104:13 invade 33:6 investigating 95:21 investigation 87:4, 88:4, 96:8, 96:18, 103:5, 105:25, 110:8, 112:10, 113:7, 113:8, 114:24, 114:25, 125:5, 125:10, 125:13, 130:15, 130:17 investigations 127:24 investigatory 106:9 investment 62:16, 92:9, 92:10 invite 26:15, 32:20,	85:3 invited 126:2 invoices 43:18 involve 130:10 involved 24:11, 25:11, 41:5, 41:15, 49:15, 54:14, 54:23, 84:14, 125:2 involvement 40:14 ironically 70:14 IRS 133:6 island 23:18 issuance 42:1 issued 5:16, 11:17, 17:13, 17:18, 42:16, 118:12, 118:24 item 12:18, 22:2, 34:10, 41:21, 49:8, 49:18, 49:20, 50:24, 59:8, 61:10, 61:12, 131:11 items 36:21, 101:10, 136:13 itself 18:21, 53:2, 55:16, 70:21, 105:3, 109:3 IV 61:12 < J > jam 113:12 January 42:6 Jenner 61:21, 117:13 Jimenez 76:4, 76:7, 76:8 job 56:5, 121:16 Joe 10:7 John 3:7, 116:15 join 111:9 joinder 67:15 joined 67:16, 107:8 joining 38:3 joint 9:24, 44:1, 131:11 Jointly 1:11 Joseph 2:38 Juan 5:1, 5:8,
---	--	---

136:25
judges 76:12
judgment 124:8,
124:10
judicial 5:16
Judith 1:39, 138:8
July 136:15
jump 30:3, 39:15,
86:11
juncture 63:20
June 14:13, 14:14
junior 24:16
jurisdiction 78:23
jury 87:3, 87:4
justification 43:21,
44:6, 78:23
justified 42:22

< K >

Kahn 34:13
Katherine 2:14,
34:13
Katiuska 2:25
Kauffman 2:36
Keech 55:17
Keep 32:2, 38:23,
60:5, 96:9, 96:18
keeping 125:14
kept 10:24
kick 56:25
kicked 39:1
kicking 53:22
Kim 119:18
kind 35:9, 37:20,
43:4, 55:21, 88:4
kinds 101:24
knowing 38:20, 128:4
knowledge 54:16,
100:1
known 68:1
knows 112:16, 112:17
Kobre 119:18

< L >

labels 117:21
Labor 20:6
laboring 111:14
lack 23:22, 28:19,

77:16, 94:20
laid 125:21
Landon 2:35, 117:12
large 57:8
larger 14:2, 60:9
last 6:8, 13:22,
15:21, 16:12,
25:4, 28:4, 29:8,
29:16, 32:10,
32:13, 41:21,
102:12, 116:24,
124:4, 135:19
lasted 7:17
late 31:4, 93:14
later 10:18, 34:25,
80:17, 86:4,
112:12
latter 20:3
launch 19:3, 19:8
Laura 1:38, 138:7
LAW 16:24, 20:21,
30:19, 121:5,
131:24, 132:10,
132:12, 132:19,
132:21, 134:10,
136:20
lawsuits 60:6
lawyer 121:1
lawyers 67:19
layer 15:24
lead 75:17, 78:15
leading 22:7
leads 20:7, 63:12,
72:18
learned 24:23, 51:5,
52:15
learning 15:21, 47:6
leash 125:14
least 20:10, 32:12,
32:13, 48:20,
50:11, 61:25,
70:18, 71:17,
72:12, 109:5,
109:12, 112:25,
113:11, 120:5,
120:8, 122:12,
122:18, 128:25
leave 32:1, 58:14,
131:4, 134:11
leaving 78:20,

129:18
Lecaroz 2:11, 79:3,
79:6, 79:7, 79:10,
80:13, 80:22,
81:12, 82:7,
83:16, 85:3,
85:10, 85:11
led 36:25
left 18:9, 91:6
legal 89:20, 100:15
legislation 17:6,
18:21
legislature 18:14
lend 53:2
lengthy 132:6
less 38:15, 42:12,
56:7, 78:21
lessons 47:23
letter 135:24,
135:25
level 16:1
levels 14:1, 80:4
levied 126:7
Lexis 47:6
liabilities 62:23,
62:24
liability 62:14,
62:21, 134:3
liable 133:15
lift 92:20, 129:1
light 25:5, 75:23
likely 111:2
Likewise 8:23, 11:19
limit 41:22, 43:19,
44:18, 44:22,
74:9, 100:2
limitation 108:12
limited 5:25, 6:5,
21:24, 29:17,
57:13, 59:24,
65:24, 73:24,
93:1, 96:1, 98:14
limits 95:17
line 25:3, 48:9,
51:10, 84:19
lines 14:3, 16:1,
43:9, 43:22
lion 11:12
liquidity 14:8,
14:15, 14:24,

15:2, 60:2
list 54:10, 108:14
listening 5:15,
102:18
literal 135:23
Literally 90:5,
119:6
litigation 8:18,
11:11, 12:11,
24:13, 70:25, 80:2
little 10:18, 28:5,
37:24, 51:3,
59:19, 68:17,
82:20, 86:21,
112:21, 117:22,
118:20
live 93:8, 105:25
living 7:21
loaded 5:22
loan 14:10, 14:12,
14:13, 14:18,
20:15, 20:19,
22:13, 22:17,
30:20, 33:7
loans 16:24, 17:21,
18:8
local 10:23, 20:21,
30:19
log 113:12, 113:22,
113:23, 113:25,
114:3, 114:14,
114:17, 114:18,
128:12
logs 114:6, 128:10
long 24:23, 46:7,
55:14, 61:18,
61:20, 124:1,
135:13
longer 82:20, 93:22,
97:5, 133:11
look 5:9, 20:12,
23:1, 43:16,
46:19, 57:15,
87:4, 87:7, 127:3
looking 21:13,
27:18, 33:8,
38:18, 48:16,
72:22, 83:13
looks 48:8
LOPEZ 2:42, 33:23,

34:7
lose 64:2
lost 15:18, 86:2
lot 15:20, 24:22,
25:1, 38:11,
39:19, 51:13,
55:12, 57:4,
80:23, 86:22,
89:11, 95:7, 98:9,
104:2, 105:14,
108:20
loud 126:10
love 26:22
low 12:11
Luc 2:17, 75:7,
86:7, 134:16
Luis 2:30
lunch 85:18, 85:19,
85:25

< M >
magnitude 15:22,
46:21, 82:24
mail 19:8
mailed 19:6
main 11:6
mainland 23:21
maintains 76:19
majority 14:20,
77:18
manage 22:10
managed 22:10
Management 1:10,
15:19, 26:13, 71:9
mandate 110:6
mandatory 14:12,
14:16
March 93:14
Mariani 2:30
market 44:11
marks 6:11
materials 35:3,
35:6, 35:10, 38:6,
88:16, 110:20,
110:21, 130:13,
130:14
matter 21:8, 25:25,
29:9, 40:19,
44:25, 57:12,

59:24, 73:11,
81:23, 82:12,
86:13, 87:5,
121:19
matters 8:17, 8:23,
51:14, 56:18,
58:23, 60:25,
73:5, 136:14
mature 71:15, 84:13
maximum 94:16
Mayol 2:36
Mckinsey 52:16,
52:17, 52:19,
52:21, 53:1, 53:4,
54:7, 54:21,
54:22, 55:3
mean 28:9, 28:24,
31:7, 32:15, 95:5,
98:12, 108:21,
110:2, 122:14,
124:10, 130:21
Meaning 23:21,
89:19, 92:19,
93:4, 96:2, 96:17,
98:11, 119:25,
134:19
Meaningful 54:18,
54:24
meaningless 89:19
means 8:1, 19:5,
37:15, 42:11,
52:20, 87:25
measure 36:1, 44:16
measures 36:3, 36:4,
36:15, 37:9,
37:13, 37:20,
43:5, 46:15,
46:17, 46:21,
87:14
mechanics 39:11,
53:9
mechanism 17:2,
27:4, 33:20
mechanisms 33:19
mediation 6:17,
8:14, 10:11, 35:5,
35:9, 42:10, 42:12
mediators 7:13, 8:9,
8:13, 9:5
medium 14:24

meet 31:8, 77:15,
96:3, 98:15, 98:16
meeting 34:23
meetings 48:19
meld 66:16
member 66:24, 66:25
members 5:6, 27:17,
69:19, 69:20,
71:1, 83:7, 91:6,
91:12
membership 66:1,
68:16, 69:15, 74:1
memoranda 42:16,
43:15
mention 39:23, 68:7
mentioned 12:6,
27:16, 34:12,
46:4, 46:6, 72:7,
76:21, 81:1,
81:19, 82:7
merely 57:1, 134:8
merits 13:2, 33:25,
34:3, 79:14
met 55:23, 87:25
metrics 54:11,
54:20, 54:21
Michael 79:7
microphone 23:8
middle 117:14
milestone 18:2
million 11:9, 14:8,
14:9, 14:12,
14:22, 17:24, 33:6
mind 9:14, 21:20,
61:6
Minias 2:38, 10:4,
10:5, 10:7
minimis 45:4, 52:15,
52:16, 52:20,
56:7, 57:11, 59:1
minimum 22:12, 26:12
minute 7:1, 16:25,
103:2, 121:7
minutes 49:10,
86:10, 86:18,
103:25
miraculously 30:9
mirrors 118:4
misapprehension
111:13

misrepresentation
78:2
missing 101:25
mistrust 78:14
modest 56:16, 96:3
modification 16:13,
17:8, 18:10,
18:17, 19:23,
32:25, 77:11, 81:6
modifications 7:25,
8:12
modified 18:14,
62:20
modify 66:19, 81:10
moment 22:25, 59:18,
64:1, 99:1, 105:5,
131:18
momentum 30:11
Monday 9:14
money 31:25, 32:5,
123:20
monies 135:11
monitored 42:25
monitoring 41:23,
42:8, 84:19,
85:12, 85:13
Monsita 2:11, 79:6,
85:10
monthly 40:7, 40:23,
44:20, 44:23,
56:17
months 7:6, 10:13,
47:10, 90:5, 95:9,
99:7, 107:11,
109:7, 117:22,
118:5, 124:4
morning 9:18, 9:19,
13:18, 13:19,
16:10, 34:15,
34:16, 46:1, 46:2,
48:2, 61:14,
61:15, 61:18,
76:4, 76:6, 79:4,
79:5, 79:9, 90:20,
94:13, 117:12,
131:15
morph 136:24
motivated 132:25
mouths 67:18
movant 9:24

move 7:1, 9:10,
18:1, 60:4, 60:12,
60:15, 125:15,
131:17
movie 75:9
moving 8:10, 18:21,
27:19, 130:4
multiple 25:10,
59:24, 128:2
municipal 18:4
municipalities 18:8
municipality 18:9
Myers 16:9, 111:8,
131:16
myself 30:4
mystery 115:15

< N >
name 76:7
named 115:10
narrow 19:17, 99:22
Nathan 2:23, 13:20,
59:12
nature 22:16, 47:11
NDA 90:4, 111:24,
112:4, 112:12,
118:6, 118:14,
121:13, 122:3,
124:4
Ndas 123:9
near 8:6, 15:2,
27:8, 30:14
necessarily 54:20,
72:18, 72:20,
81:21, 84:7, 126:6
necessary 5:11,
20:8, 20:18,
20:24, 21:11,
22:8, 24:22,
31:12, 34:6,
40:21, 41:15,
42:4, 44:2, 47:17,
66:19, 68:20,
77:13, 113:10,
116:10
necessity 52:24,
53:6, 54:4, 60:22,
80:11
needed 18:1, 62:5,

62:6, 112:9, 130:8
needs 7:25, 14:24,
24:5, 24:17, 70:7,
87:12, 93:23,
96:12, 101:8,
101:9, 110:10,
113:20, 120:25,
127:1, 128:12
negotiate 115:24
negotiated 18:6,
58:15
negotiating 113:17,
124:3, 124:6
negotiation 6:14
negotiations 95:13,
120:22
net 17:20, 17:22,
62:23, 73:4
New 5:7, 7:14, 10:5,
13:4, 16:7, 17:11,
17:13, 26:16,
32:21, 34:25,
37:16, 78:24,
93:12, 93:13,
99:15, 121:7,
122:24, 125:2,
130:21, 136:16,
137:3
newly 17:18
newspaper 86:25
next 8:3, 12:18,
13:11, 22:2,
29:11, 34:10,
34:23, 39:16,
48:20, 49:8,
49:18, 49:20,
59:8, 61:10,
105:9, 116:7,
120:23, 122:5,
124:16, 126:15,
129:20, 130:1,
136:18, 137:1
Nicholas 3:9
Nick 122:25
night 6:8, 29:16,
102:12, 135:19
nobody 92:19, 95:20
nod 136:7
noddled 136:10
Nodding 83:16,

126:18, 131:1,
131:2, 136:8
nods 122:21, 130:25
non-disclosure
113:17, 115:25,
120:23
non-financial 118:18
non-flat-fee 57:11
non-privileged
112:1, 113:1
non-puerto 120:12
non-three 12:3
non-title 8:12,
51:4, 51:21,
58:14, 58:22
non-waivable 37:17
None 4:5, 4:11,
28:21
nonetheless 44:3
nor 5:19, 78:24
notch 43:15
note 6:21, 10:3,
46:4, 48:8, 66:22,
126:1, 130:25
noted 16:11, 17:25,
36:6, 47:1, 54:8,
56:15, 69:17, 80:2
notes 5:21, 5:22,
23:1, 35:1, 36:6
nothing 71:11, 72:4,
82:3, 92:18,
98:16, 111:17,
123:4
notice 6:16
noticed 53:12
notion 56:9, 80:10
novel 47:4
November 60:17,
60:23, 61:1, 61:4
number 16:25, 24:9,
35:2, 39:25,
43:16, 56:15,
68:22, 70:4,
77:25, 94:1,
101:11, 101:22
numbers 44:22,
54:23, 54:24
numerous 125:1

< O >
o'clock 49:17, 85:20
O'melveny 16:9,
111:8, 131:16
objection 9:13,
9:14, 10:9, 27:5,
52:10, 116:19,
117:7, 133:1,
133:20, 133:24,
134:1, 134:6,
134:13, 135:17,
135:23
objections 31:18,
35:13, 35:17,
45:15, 51:1
objectively 79:23
objectors 6:16
objects 107:6, 107:7
obligated 115:1
obligation 52:6,
53:5, 98:15,
133:12
obligations 77:4
observations 37:1,
49:24, 85:3
observe 82:20
observed 6:2
observing 5:7
obstruct 114:24
obtain 27:7, 105:2,
106:2, 106:16,
107:6, 120:16
obtained 88:19,
103:8
obvious 18:2, 53:22,
79:23
Obviously 11:16,
15:14, 24:6,
24:10, 24:13,
25:7, 53:10, 55:7,
55:12, 56:23,
116:19, 123:12
occur 39:3
occurred 44:16,
89:9, 89:13, 121:9
offered 4:5, 4:11,
28:6, 115:2, 115:3
offering 19:5
offers 12:12
Office 64:5, 64:15,

66:7, 67:11, 69:2, 69:5, 69:7, 69:12, 69:14, 75:3, 79:2, 79:8, 82:19, 83:2, 83:10, 83:13, 84:8, 84:17, 84:25, 85:2, 85:6, 85:7, 88:1 officers 25:18 Official 2:16, 61:22, 63:7, 63:14, 64:17, 67:16, 67:23, 72:17, 75:8, 76:11, 77:7, 83:8, 138:16 offline 21:25 offset 18:7 offsetting 17:1 Okay 58:17, 65:6, 76:3, 88:23, 98:9, 99:4, 99:8, 99:13, 100:19, 102:7, 102:20, 104:21, 105:21, 110:2, 111:5, 114:19, 116:11, 122:20, 123:16, 126:14, 130:4, 130:10, 130:15, 130:23, 131:7 old 17:12 Omni 20:9, 61:1, 61:2, 120:23, 136:15 Omnibus 1:37, 116:7, 137:1 on-island 16:17, 16:18 once 81:8, 101:4, 134:21 one-thousandth 44:23 one. 94:1, 102:22, 104:23 ones 57:15, 59:19, 118:2 ongoing 41:23, 113:7, 116:24 open 10:24, 36:7, 53:10, 56:23,	128:7 open-ended 60:19 opening 53:17, 86:11 openness 47:15 operating 15:2 operational 14:19, 14:20, 77:3 operations 5:12, 60:1 opportunities 6:16 opportunity 7:10, 28:20, 59:21, 82:19 oppose 71:12, 74:3 opposed 19:15, 54:10, 66:4, 125:7 opposition 67:25, 79:15, 80:7 optimistic 62:18 options 14:25, 69:22 oral 32:11 ordered 55:25, 79:18 Orders 5:16, 29:16, 35:9, 40:6, 41:13, 53:15, 56:12, 79:16, 111:1, 135:25 ordinary 56:9, 56:12 Oreste 2:41 organisms 7:21 organization 90:14 organizations 77:23, 82:22 organize 30:10, 31:12 original 66:22, 80:24 others 46:6, 53:4, 56:17, 98:20 otherwise 6:2, 6:3, 33:6, 55:5 ought 114:14 ourselves 134:17 outset 86:17 outside 5:18, 20:1, 40:19, 51:14 outstanding 20:14 overarching 127:21 overattendance 36:11, 43:21,	46:10 overdeliver 24:25 overlap 38:17, 38:19 overread 133:24 Oversight 1:9, 6:24, 7:7, 16:13, 18:16, 19:2, 53:1, 54:3, 54:6, 54:19, 59:14, 67:16, 73:24, 100:22, 101:2, 107:19, 107:21, 108:4, 108:14, 109:11, 109:12, 109:17, 111:11, 119:13, 119:15, 121:19, 128:22 overstaffing 36:10 owed 95:23 own 15:8, 38:7, 55:16, 133:16 < P > PAGE 4:3, 101:21, 123:24 pages 36:21, 37:10, 89:11, 89:22, 89:23, 123:5, 138:4 paid 40:17, 40:21, 40:22, 135:1 papers 44:1, 101:14, 108:19, 114:22, 117:7 Paragraph 70:20, 71:14, 101:22 part 5:19, 15:12, 17:2, 20:3, 46:7, 46:15, 62:9, 63:20, 71:11, 80:3, 81:3, 84:5, 95:12, 107:1, 112:15, 119:21, 121:22, 132:7, 133:9 participants 5:8, 6:18, 62:10, 77:22 participate 100:8 participation 42:21
---	--	--

particular 5:21, 38:21, 42:21, 43:17, 53:6, 53:13, 54:24, 54:25, 57:5, 68:7, 69:5, 76:14, 106:23, 115:10, 135:20 particularities 77:1 particularly 33:7, 50:15, 107:16, 137:5 particulars 31:14 Partnership 1:23, 2:46 parts 16:22 party 21:16, 24:6, 44:8, 44:9, 53:7, 55:6, 56:24, 64:2, 72:10, 91:18, 92:14, 106:16, 107:5, 107:6, 107:7, 109:23, 109:24, 128:20 pass 118:6 past 10:12, 14:21, 25:20, 47:23, 87:1, 87:5, 135:14 path 18:21, 18:25, 101:9, 106:22, 107:22, 110:10, 111:4, 121:24 patience 13:16 Paul 2:6, 12:8, 75:7, 86:8, 134:17 pay 134:23 payee 135:6 paying 125:5 payment 40:6, 40:12, 41:6, 41:13, 77:2, 77:3, 131:23, 132:1, 132:8, 132:18, 133:8, 133:10, 135:14 payments 40:1, 40:23, 132:3, 132:4, 132:5, 132:11, 132:22, 133:4, 133:14, 133:19, 135:14	payor 41:10, 133:9, 133:11 Peaje 8:20 pending 31:24, 32:4, 32:18, 32:24, 37:4, 70:25, 80:2, 112:4 pension 11:9, 11:20, 63:2 people 7:10, 11:24, 15:11, 20:11, 23:19, 24:9, 30:5, 38:22, 39:23, 49:17, 54:23, 70:1, 84:3, 84:4, 87:17, 92:3, 92:5, 93:20, 95:14, 97:24, 99:21, 100:1, 115:23, 116:4, 116:9, 130:19, 131:22, 132:15, 132:23 perceived 29:25, 50:2 perceives 85:6 percent 13:25, 14:1, 14:2, 14:4, 17:12, 44:24, 62:17, 63:2, 70:6, 134:25 percentage 39:16, 40:18, 44:19 perception 46:10 perfection 37:6 performed 50:5, 52:8, 58:20, 135:7 Perhaps 21:20, 42:11, 43:15, 44:20, 45:7, 57:19, 60:18, 65:10, 67:9, 71:10, 71:15, 74:25, 106:18, 122:1, 122:5 Period 10:21, 12:24, 15:4, 21:2, 21:4, 21:10, 21:11, 33:10, 34:18, 34:24, 38:20, 39:2, 39:14, 39:17, 46:20,	46:22, 47:4, 52:22, 59:10, 87:23, 97:17, 103:9 periodicals 10:23 periods 46:20, 47:10, 54:25 permanent 14:17 permission 107:5, 111:19, 112:1, 121:2 permitted 5:25, 43:17 person 5:18, 5:25, 36:16, 42:20, 42:21, 89:23, 133:10 personal 127:8 personnel 59:25, 114:23 perspective 38:7, 55:10, 63:19 perspectives 72:15, 72:16, 72:20, 72:21 persuade 47:16 persuasive 115:6 petition 50:13 phone 64:3 phonebooks 89:6, 89:7, 92:7 PHV 2:5, 2:6, 2:7, 2:8, 2:13, 2:14, 2:17, 2:23, 2:25, 2:29, 2:31, 2:34, 2:35, 2:38, 2:46, 2:47, 2:48, 3:7, 3:9 place 15:16, 38:8, 39:12, 46:22, 53:5, 55:7, 71:15, 130:22, 132:24 placed 106:1, 117:21 places 90:16 Plaintiff 1:26 planning 75:2 plans 7:3, 7:12, 7:15, 7:21, 7:25, 8:2, 8:11 play 104:25, 107:15
--	--	--

playing 124:2,
124:24
plays 37:8
pleading 49:19,
73:23
pleadings 44:1,
44:4, 44:7, 65:7,
72:9, 86:14, 87:9,
88:25
Please 13:8, 26:18,
89:21, 131:10
Pleased 6:8, 9:20,
42:8
PM 85:23, 131:8,
137:11
podium 9:17, 13:8,
16:7, 26:16,
26:18, 32:21, 85:4
point. 36:3, 48:18,
66:25, 110:24,
116:1
pointing 87:20
points 23:12, 25:6,
64:6, 86:20,
109:10, 123:18
policies 5:16, 132:9
Ponzi 25:20, 87:2,
90:17
pooling 19:13
Poor 92:7
Popular 3:6, 89:6,
91:7, 91:17, 92:4,
92:20, 97:16,
102:21, 103:6,
104:22, 106:7,
116:17, 126:3
portions 51:16,
51:17
pose 126:4
position 29:4, 33:2,
35:8, 58:8, 65:14,
67:21, 75:11,
78:1, 79:11,
79:14, 80:12,
81:2, 84:15,
104:18, 105:20,
109:12, 110:7,
112:8, 118:2,
128:3, 129:11,
134:12

positions 38:5,
43:24, 63:22,
111:10
possibility 116:6
possible 36:5, 37:6,
73:8, 94:16,
115:13, 126:11
Possinger 2:6
post-hurricane 13:23
potential 7:25,
27:5, 35:25, 36:2,
36:4, 37:19,
37:25, 38:9,
44:16, 101:15,
114:25
potentially 78:9,
109:21
Power 2:23, 13:25,
62:2, 74:12,
76:19, 84:18,
92:14
practical 52:9,
52:12, 57:12,
59:23, 82:12,
125:23
Practice 31:2,
31:24, 32:25,
43:25
practices 47:21
PRASA 7:4
pre-appointment
50:20, 58:13
pre-established
42:23
pre-hurricane 12:21
pre-retention 50:20
precedent 47:7, 47:8
preceding 46:20
precipitously 47:3
precise 22:16, 90:1,
99:16
precisely 102:12,
112:9
preclude 72:4
prefer 57:24
preference 28:14,
29:21, 67:23
prejudice 31:23,
82:25, 83:4,
83:22, 101:3

preliminary 9:3,
9:6, 27:19
preparation 15:22,
137:5
preparations 15:14
prepare 114:18
prepared 35:20
prepares 15:13
prepayments 14:17
prepays 14:17
preposition 66:14
present 62:23,
102:19, 122:9,
124:14
presentation 7:15,
51:15
presentations 137:7
presented 53:19
presenting 61:6,
78:5, 105:9
presently 119:2
preservation 33:25,
34:5
preserve 32:8
preserved 32:12,
32:17
press 5:6, 6:1,
25:19
presumably 52:1,
128:22
presumption 123:13
presumptive 43:16,
43:19, 44:18,
44:22, 46:5
pretty 118:15
prevent 35:9
previewed 37:2
previous 59:19,
97:13
previously 10:19,
12:4, 36:6, 74:5,
91:7, 135:11
primarily 38:13,
50:4, 57:3, 131:22
primary 17:19, 18:5
principal 16:15
principally 69:13
principle 6:9, 6:13,
29:15
principles 43:14

prior 12:5, 50:5, 58:20, 86:14, 114:24	89:23, 91:1, 92:25, 93:1, 93:23, 95:6, 100:16, 110:16, 113:24, 114:2, 114:18, 124:20	11:3
privatization 51:12, 63:4, 82:16	producing 91:18, 91:19, 92:14, 93:20, 106:16, 106:17, 107:7, 108:1, 108:2, 108:15, 108:20, 109:23, 109:24, 110:15, 111:3, 113:22, 116:22, 116:23, 123:11, 128:19, 129:1	proper 22:10, 26:14, 62:7, 65:21, 68:6, 70:9, 70:10, 71:16
privilege 113:22, 113:23, 113:24, 114:3, 114:6, 114:14, 114:16, 114:18, 128:10, 128:12	production 89:9, 89:13, 90:25, 92:22, 92:24, 98:12, 108:11, 115:14	properly 30:10, 67:10, 85:6
pro 121:2	productions 113:4, 113:9	property 19:15, 20:15, 20:20, 20:21, 21:14, 21:15, 30:20, 33:7
probably 22:1, 88:6, 123:11, 130:9	productive 7:18, 8:10, 34:20	proponent 76:1
problem 53:23, 61:16, 82:10, 89:15, 91:16, 93:10, 103:19, 108:19, 119:4, 119:5, 120:19, 126:12, 130:18	professional 39:12, 51:7, 51:11, 53:6, 53:14, 54:16, 54:17, 55:13	proponents 29:25, 73:18
problematic 39:3	professionalism 137:3	proportion 44:21
problems 36:8, 47:11, 75:12, 118:15	proffered 54:21	proportionally 57:9
procedural 25:25, 26:12, 31:22	progress 5:9, 6:19, 13:23, 28:6, 34:19	proposal 9:13, 13:6, 26:12, 27:9, 31:13, 31:17, 33:18, 33:20, 36:5, 38:12, 49:13, 56:9, 56:22, 57:5, 59:2, 110:18, 110:19
procedurally 30:11, 31:21	projects 54:23, 54:25	proposals 14:25, 45:14, 82:16
procedures 40:7, 40:8, 56:12, 132:9	proliferation 38:2	propose 24:7, 27:6, 97:1
proceeding 6:4, 19:7, 19:9, 25:17, 26:3, 28:10, 28:12, 28:13, 29:19, 76:18, 95:11	PROMESA 19:12, 38:1, 50:10, 52:23, 53:15, 53:20, 54:9, 94:21, 99:19, 121:16	Proposed 19:25, 21:1, 21:23, 22:1, 29:10, 29:16, 32:3, 45:21, 58:12, 61:7, 72:24, 90:11, 126:3, 131:20, 131:21, 136:2
Proceedings 3:49, 5:10, 5:15, 5:19, 6:12, 20:6, 20:24, 30:18, 31:15, 79:24, 85:23, 137:4, 137:11, 138:6	promise 31:5	proposing 18:24
proceeds 14:7	promised 85:17	prosecution 132:18
processes 11:19, 15:13, 15:16, 41:8	promote 20:10	Proskauer 6:24, 100:22
processing 132:8, 132:18	prompted 117:3	prospective 47:20
produce 89:21,	promptly 135:2	prospectively 47:24
	proof 23:16	prospectus 89:12
	proofs 10:25, 11:2,	protect 115:14
		protected 35:4
		provide 9:25, 12:10, 18:3, 19:9, 21:21, 30:17, 43:20, 46:23, 55:21, 64:22, 65:14, 67:5, 99:19,

102:4, 112:1,
126:3, 135:5
provided 45:2,
52:25, 54:4,
55:21, 102:17,
123:6, 126:5
provider 57:8
providers 44:13,
57:10, 57:11, 58:2
provides 17:9,
73:12, 132:21,
134:8
providing 41:8,
60:23, 132:20
province 66:3, 67:7,
67:11
provision 77:2
provisions 5:11,
41:13, 80:1, 100:5
PRS 76:9, 76:13,
76:18, 77:18,
77:22, 78:9
Public 5:6, 7:9,
16:19, 16:23,
17:3, 17:16,
17:19, 18:19,
89:7, 90:14, 92:8
publication 10:23
punishment 114:11
purpose 24:8
purposes 31:22,
46:19
pursuant 10:20,
12:24, 135:25
pursue 107:20,
110:10, 118:10,
134:19
pursuing 88:2,
110:11
push 34:4, 118:3
put 9:24, 15:16,
20:23, 28:22,
29:15, 30:15,
39:12, 41:17,
56:24, 87:21,
96:20, 118:23,
119:9, 119:19,
123:20, 130:10
putting 67:18, 99:20

< Q >

qualifying 8:11,
16:13, 17:8,
18:16, 19:22,
32:24
qualitative 54:11
quantitative 54:12
quarterly 40:24
question 22:13,
23:10, 25:13,
46:8, 48:10,
71:25, 75:20,
81:18, 88:17,
91:3, 92:16,
119:25, 133:21
questions 7:16,
22:23, 23:2,
35:20, 35:22,
47:16, 49:12,
79:20, 84:22,
85:1, 86:19, 96:24
queue 29:24, 30:4,
30:5, 40:12, 82:24
queuing 22:9, 31:2
quick 31:6
quite 7:18, 29:17,
29:24, 33:2, 47:1,
66:15, 120:24
quote 25:21, 86:25,
87:2, 88:3

< R >

radar 26:7
radio 10:23
RAIFORD 2:35,
117:12, 117:13,
118:20
raise 39:5, 71:5,
71:24, 73:14,
81:25, 136:16
raised 22:18, 30:21,
42:9, 43:12,
68:14, 70:25,
71:25, 82:22,
82:23, 84:22,
103:14, 114:21,
123:23, 134:4,
134:6, 135:22

Ramos 2:41
range 19:17
rather 19:17, 31:1,
38:6, 51:18,
106:13, 112:12
rating 92:7
Re 1:6
reach 9:8, 84:7
reached 12:22,
52:21, 55:19
reaching 9:5
read 19:25, 105:4,
106:4, 106:7,
107:13, 117:6
Reader 94:18, 98:19
reading 25:19
ready 65:12, 93:14
real 22:6, 30:11,
37:19, 52:10,
109:9, 114:11
realistic 32:15
realities 43:5
really 16:21, 18:1,
25:22, 28:22,
38:22, 47:12,
48:25, 51:4,
63:11, 71:11,
74:13, 81:2,
88:18, 96:2,
98:25, 119:8,
126:21, 132:2
Reason 18:9, 29:4,
38:16, 63:12,
64:21, 84:5, 90:3,
94:24, 103:2,
115:13, 118:20,
131:25, 132:7
reasonable 39:18,
47:17, 120:2,
120:4
reasonableness
52:24, 53:6, 54:3
reasoning 65:1,
79:22
reasons 30:12, 62:4,
63:7, 65:3, 78:22,
131:20, 132:15
recall 40:23, 86:22,
103:15
receipt 45:5, 45:8,

45:9
receipts 14:19, 45:4
receive 17:11, 85:14
received 92:3,
92:12, 112:1,
124:20, 125:25
receiving 105:3,
111:22
recent 82:15
recertified 18:16
recess 85:22
recklessness 78:16
recognized 30:17
recognizing 42:18
recommence 8:8
recommendation 53:9,
55:3, 55:22,
57:17, 100:25
recommendations
35:16, 36:23,
40:5, 40:14, 44:8,
48:24, 50:21,
78:15
recommended 35:14,
45:20
reconcilable 11:15
reconciled 11:18
reconciliation 11:23
reconvened. 85:23
record 5:19, 36:10,
45:14, 61:21,
82:9, 83:6, 86:16
recorded 3:49
recording 5:24
records 40:20, 97:7
Recovery 13:23,
17:15, 51:8,
51:11, 60:1,
87:13, 102:5
reduced 17:1
Reed 28:2
reestablished 14:4
refer 5:22, 68:2
referred 11:14,
12:3, 12:19
referring 36:20
refinancing 25:14
reflect 26:12, 27:5,
43:19, 51:25,
82:20

reflected 29:23,
68:15
refund 11:17
refunded 135:12
refunds 11:8
refuses 119:6
regard 36:19, 40:17,
43:5, 52:3, 79:13,
82:1
regarding 24:16,
33:10, 34:21,
78:10, 78:14,
81:1, 85:15, 89:21
regardless 52:8,
97:24
Region 2:11
regular 103:16
regulated 76:15
regulations 70:13,
70:20, 76:14
regulatory 101:25
rehash 79:19
reimbursed 51:9
reiterate 40:10,
73:10, 121:24
relate 43:11, 100:4
related 11:9, 11:10,
102:23
relates 108:8
relating 109:20
relationship 93:21,
100:14
release 99:18,
99:22, 100:4
released 128:16
releases 25:16,
25:17
relevant 68:23,
90:21
Relief 8:22, 9:7,
18:3, 59:19, 60:7,
74:10, 77:10,
77:13, 79:16,
92:18, 92:19,
93:4, 98:14, 116:8
relieving 58:25
remain 8:17, 25:24,
31:18, 32:17,
134:22
remainder 129:25

remaining 18:11
remains 25:1, 29:21,
129:2
remarks 5:13, 81:15
Remember 23:15, 24:3
remind 5:14
reminiscent 25:14
Removal 59:10, 59:16
removed 60:9
rendered 47:17
renew 101:4
renewed 85:20, 86:9,
87:24
reoccur 50:23
reorganization 24:6
repayments 14:12
repeat 33:3, 86:15
repeatedly 7:20,
101:13
replacement 15:4
Reply 9:13, 9:15,
10:9, 45:15, 68:4,
68:7, 68:10,
68:14, 81:16,
86:11, 87:21,
101:14, 114:22,
123:24
reported 7:23
Reporter 138:16
reporting 36:24,
49:25, 53:10,
56:15
reports 5:13, 6:20,
40:5, 92:7, 119:15
repository 5:18,
107:3, 107:4,
107:18, 107:21,
119:20, 119:22
represent 64:11,
64:12, 68:9,
68:16, 70:5,
74:24, 75:13,
76:8, 112:14,
119:11, 124:7
representation 62:1,
62:6, 62:7, 63:10,
65:21, 67:5,
71:16, 72:2,
73:13, 77:14,
77:17, 78:13,

81:4, 82:10, 84:8, 84:9, 102:13, 122:18, 134:21 representations 88:25, 99:2, 108:22 representative 1:13, 63:15, 68:6, 69:6, 69:12, 70:10, 70:16, 80:9, 100:23 representatives 7:20, 64:21 represented 75:11, 77:18, 77:19, 77:24, 78:3, 84:3, 84:5, 122:15 representing 64:8, 65:10, 68:5, 69:23, 69:24, 72:11, 72:13, 75:16, 123:1 represents 66:20 request 30:23, 33:25, 81:6, 90:25, 100:11, 106:20, 107:5, 107:25, 113:5, 120:3, 121:18 requested 9:7, 74:15 requests 6:6, 97:1, 108:24, 132:8 require 48:12, 117:15, 132:1 required 36:7, 56:14, 81:5 requirement 37:22, 43:23, 134:11, 135:23 requirements 19:12, 36:1, 37:16, 50:11, 55:23 requires 81:5, 132:15 requiring 44:17, 82:11 res 33:16 research 44:12, 44:15, 44:19, 45:1, 46:5, 47:2	reserved 86:10 resignation 66:24 resolution 9:3, 12:7, 12:13, 20:3, 21:7, 21:19, 29:9, 32:14, 32:18, 32:24, 33:12, 34:6, 34:21, 68:14, 77:20 resolve 21:13, 27:4, 27:9, 86:1, 90:11, 104:23, 124:22 resolved 17:5, 22:14, 33:7, 90:9, 90:10, 118:16, 120:23, 133:2, 134:5, 135:17 resolves 135:3 resolving 30:2, 33:8 resource 107:4 resources 36:7, 57:13, 59:24, 72:3, 72:8 respected 71:24 respective 7:8, 8:4, 77:23 respond 7:16, 68:13, 68:17 responding 125:17, 125:19 response 15:8, 22:2, 22:3, 49:1, 67:25, 72:9, 92:2, 97:11 responses 67:15, 67:17, 67:20 responsibilities 83:18 responsibility 54:6, 58:25, 73:14 responsive 93:2, 126:6 restored 13:25 restricted 120:2, 128:19 restriction 43:16, 105:23, 106:14 restrictions 43:4, 105:25, 108:17, 119:24, 120:14, 128:25, 129:1	restrictive 115:25 restructured 17:10 Restructuring 16:21, 16:23, 17:7, 17:14, 17:17, 18:13, 30:12, 60:3, 65:16, 71:22 result 47:19, 49:24, 50:2, 111:1 results 42:6, 108:23, 108:24 resume 85:20 retained 135:25 retention 50:5, 50:6, 50:7, 50:11, 56:13, 58:20, 134:1 Retired 61:22 retiree-related 82:8 retroactive 135:10 retrospective 47:21, 50:8 return 62:16 review 8:24, 47:14, 48:13, 50:20, 51:22, 52:2, 52:6, 53:9, 56:19, 57:4, 57:14, 57:22, 58:20, 67:9, 97:17 reviewed 42:5, 130:5 reviewing 42:2, 55:17, 113:2, 117:2, 125:25 revise 21:1 revised 21:23, 21:25, 26:11, 31:13, 59:4, 61:6 revision 52:9 revisited 13:1 revolver 14:15 revolving 14:13 rewarded 90:7 RFP 11:23 rights 22:16, 33:7 rigidly 42:22 ripen 49:2, 82:21 rise 27:14 risk 67:18 road 39:1, 69:9, 71:7
--	---	--

Robert 2:34, 61:21	121:5, 123:1,	126:4, 126:7,
robust 62:18, 70:4	123:4, 123:6,	126:11, 128:14,
Rolando 76:7	126:3	130:9, 130:21
role 19:11, 40:11,	sat 108:5	searched 88:22, 97:8
65:13, 67:24,	satisfied 19:12,	searches 128:2
70:15, 81:22	97:16, 113:9,	season 15:9, 15:13,
Roman 59:9, 136:13	134:20	15:18
room 39:24, 108:3,	save 32:5	seasoned 65:15
115:23, 119:20,	savings 37:19, 38:9	seated 85:24, 131:10
120:6, 127:1,	saw 29:22, 49:25	second 18:3, 20:13,
127:19	saying 22:6, 25:23,	34:17, 34:24,
rope 96:2	33:4, 38:12, 55:8,	46:22, 47:4,
Rose 6:24, 100:22	60:11, 63:17,	50:22, 51:6,
ROSEN 2:7, 6:23,	73:10, 83:21,	63:12, 102:16
6:24, 10:17,	84:11, 93:18,	secondly 107:14,
12:18, 13:13,	94:3, 95:14,	109:15
16:11, 27:13,	95:18, 96:25,	seconds 24:2, 75:5
27:24, 73:20,	98:20, 111:9,	secret 104:15
73:21, 73:22,	113:15, 116:2,	Section 54:8, 77:9,
74:14, 74:20,	124:17, 124:20,	77:10, 77:11,
75:14, 131:2	124:21, 125:2,	77:12, 77:16
roughly 62:11	128:4, 135:24,	secure 14:6, 111:19
round 50:3, 56:14	136:1	seeing 42:6, 103:15,
roundabout 136:1	says 75:15, 87:24,	125:11
RSA 12:22, 16:12,	92:14, 110:19,	seek 60:7, 110:23,
16:14, 17:25,	124:7, 127:19	118:24, 125:20
18:5, 18:12,	scale 107:10, 107:14	seeking 15:3, 51:9,
18:16, 18:24,	schedule 19:18,	53:20, 61:24,
19:1, 29:1, 32:24,	19:25, 20:2, 21:1,	77:10, 92:18,
34:6	21:3, 27:6, 27:9,	106:1, 106:12,
Rule 28:17, 96:21,	29:10, 32:2,	131:23, 133:10
118:11	38:24, 99:4, 99:5,	seeks 74:1, 74:4
ruled 28:14, 28:16	99:11, 99:15,	seem 28:10, 79:12
rules 48:11, 76:14,	100:8, 122:8	seemed 63:13, 63:17,
76:16	scheduled 34:23,	64:20, 133:25,
	48:20, 136:18	135:19
	scheduling 20:7,	seems 30:10, 34:6,
< S >	33:20	52:11, 54:2, 56:2,
S/ 138:14	scheme 25:20, 87:2,	82:6, 88:24, 99:1,
safe 57:21, 137:8	90:17	120:2, 120:4,
safety 73:4	scope 73:25, 74:15,	120:17
salutary 52:11	108:15, 125:17	seen 68:11, 90:20,
San 5:1, 5:8, 136:25	screen 26:7	129:2
sanctions 6:5	search 89:17, 89:18,	segregated 103:1,
Santander 3:9, 89:5,	91:3, 97:21, 98:5,	120:5
89:10, 91:7,	98:9, 103:11,	segregation 31:25
91:17, 92:4,	103:21, 104:12,	segue 106:2
92:20, 97:16,	120:19, 120:20,	selecting 66:2
102:22, 103:7,	123:23, 123:25,	selection 12:1, 66:1
104:22, 106:7,	125:24, 126:3,	semiproponent 76:2

sending 96:13
senior 24:16
sense 13:10, 53:5,
55:12, 56:20,
60:4, 60:12, 63:8,
73:14, 75:10,
86:2, 121:10,
121:20, 122:7,
124:13, 129:20,
130:24
sensitive 62:22,
117:18
sensitivity 108:7
separate 31:1, 44:3,
44:6, 48:6, 58:14,
74:7, 75:18,
75:24, 76:14,
127:6
Separately 17:16
September 20:9,
33:15, 34:5,
94:24, 96:5,
96:11, 98:23,
101:5
series 55:14
serious 30:23,
79:23, 82:8, 87:5
serve 65:13, 67:24,
70:15, 124:19
served 7:11, 106:14
service 14:3, 51:20
services 5:12,
44:15, 47:6,
47:17, 51:21,
52:25, 53:7, 54:4,
65:15
servicing 14:20
serving 64:17,
106:13
sessions 7:14,
23:14, 23:16
set 10:20, 18:6,
18:23, 18:25,
19:18, 19:20,
24:2, 38:24, 39:1,
39:13, 70:13,
132:10
setting 9:14
settled 17:17
settlement 6:9,

6:13, 6:14, 9:9,
17:5, 18:19, 24:5,
27:19, 95:22
several 8:17, 8:19,
11:6, 11:25, 25:8
Shaking 131:6
share 11:13, 79:22,
80:12, 92:14,
105:6, 106:15,
106:20, 111:19,
112:2, 121:18
shared 89:24,
105:11, 108:25,
126:11, 129:15
sharing 91:16,
92:13, 106:17,
108:13, 108:14,
111:17, 120:19
shifting 99:2
short 14:23, 44:1,
125:14
showed 23:19
showing 45:1, 81:20,
95:14
shows 87:11
shut 23:21
side 14:8, 24:4,
41:16, 43:9, 76:2,
130:6, 131:6
side. 131:6
sidelines 93:24
Sidley 123:1
Siemens 1:22, 2:44,
13:11, 20:14,
21:15, 22:3,
27:25, 28:3, 29:1,
32:18, 33:4
sign 25:9, 55:25,
118:7
signal 96:13
signals 5:23
signed 55:6, 70:1,
112:12
significant 6:11,
6:19, 13:23,
48:22, 56:11
significantly 56:8,
62:21, 62:24
silent 25:24
silly 44:22

similar 20:22, 21:7,
38:5, 43:24,
54:16, 55:19,
87:15
similarly 21:16,
37:10
simplify 102:18
simply 40:20, 47:23,
53:2, 54:5, 56:17,
65:8, 116:6
sincere 10:10
single 38:8, 43:2,
89:25
sit 99:10, 107:25,
108:5
sitting 13:4, 55:5,
87:2, 111:25
situated 21:16
situation 11:16,
11:18, 15:17,
50:12, 71:20,
82:17, 132:13
situations 42:20
six 7:3, 47:2
size 56:11
slot 57:23
small 56:18, 57:22
smaller 57:10
Smith 28:2
smoke 118:4
sole 66:3
Soler 2:42
solicitation 18:22,
19:2, 19:3, 19:15
somebody 84:8, 88:1,
113:17, 126:16
somehow 83:25,
84:11, 114:23
someone 57:1, 64:2,
65:9, 70:7, 83:25,
84:14, 122:23
sometimes 47:16
somewhat 70:13,
83:23
soon 118:24, 132:13
sooner 112:12
soothe 38:11
Sorry 13:9, 19:8,
38:1, 66:14, 75:4,
81:12, 98:10

sort 19:17, 28:6,
37:2, 50:23, 52:9,
52:21, 54:23,
55:3, 56:9, 57:21,
57:23, 65:14,
66:16, 72:11,
117:18, 122:11,
130:25, 136:3
sorts 41:14, 59:3,
82:21
sought 25:16,
106:10, 135:15
sounds 28:4, 30:13,
39:18, 120:9
source 5:18, 76:15,
89:5
SOVEN 2:47, 28:2,
30:7, 31:7, 31:19,
32:7, 32:10
Spanish 68:1
speaking 6:21,
38:16, 51:3,
59:15, 69:14
specific 9:13, 11:7,
33:5, 33:9, 35:25,
36:9, 38:18,
43:21, 45:13,
46:17, 47:1, 50:8,
54:10, 56:12,
82:13
Specifically 8:20,
28:22, 64:16,
101:10, 101:20,
115:3, 137:1
specificity 57:20
specifics 13:5,
13:15, 41:13,
46:3, 53:11
specified 44:19,
136:15
speculative 115:2
speech 74:13
spell 108:1, 127:2
spend 24:2
spent 10:12, 52:25,
54:24
spoke 31:11, 55:18
spoken 133:6
spots 10:23
Springer 2:46

squarely 134:7
SREAE 68:2
staff 57:14, 137:2
staffing 37:20
stage 10:14, 24:2,
63:5, 130:7, 135:8
stakeholders 76:17
stalling 109:7
stand 71:9, 96:6
Standard 92:6
standards 42:15,
42:18, 42:24,
43:4, 52:22,
53:19, 53:20,
53:21
standing 26:25,
28:19, 71:12
standpoint 72:2
stands 28:18
standstill 32:22
Stargatt 116:16
start 6:20, 37:16,
46:3, 50:9, 89:3,
92:21, 93:5, 94:1,
96:11, 98:21,
111:9, 111:12
started 50:13, 94:23
starts 50:7, 94:4
state 23:11, 50:11,
104:25, 125:5
stated 7:21, 42:15,
63:3, 64:16, 74:4,
75:14, 127:10
statement 75:1,
78:4, 86:25, 87:21
statements 57:15
States 1:1, 1:40,
65:23, 66:3, 69:2,
69:5, 69:6, 76:22,
79:2, 82:19, 83:2,
83:13, 85:2, 85:7,
101:20, 126:1,
138:7, 138:8
status 5:13, 6:20,
34:17, 114:5,
116:6, 120:21,
126:16, 126:20,
128:15, 129:20
Statute 94:21
statutory 74:12,

79:17, 84:18
Stay 8:22, 26:18,
60:7
stenography 3:49
step 6:11, 8:3,
40:12, 113:12
steps 113:10, 130:1
stipulation 24:3
stood 65:12
stop 88:12
stops 47:7
strategic 65:14
streamline 41:7
streams 59:25
strengthen 15:8
strengthening 5:11
strenuously 81:23
strictly 40:8
structural 53:24
structure 22:7,
28:1, 39:12, 57:7,
57:24, 59:2
structured 99:23
stuff 94:11, 117:18
subcommittee 119:15
Subject 6:4, 6:13,
6:15, 7:22, 40:24,
45:14, 93:20,
95:16, 95:24,
101:3, 103:1,
103:4, 106:4,
107:12, 111:23,
128:21, 132:17,
133:4, 134:22,
135:2
submission 35:10,
39:13, 39:16,
43:20, 43:25,
63:16
submissions 54:22
submit 19:1, 35:3,
38:6, 38:7, 44:5,
58:12, 59:4,
79:11, 134:21
submitted 11:24,
16:12, 29:16,
35:15, 53:24,
58:21
submitting 35:6,
135:1

subordinated 77:3, 87:17	sybiotic 93:21	28:6, 31:10,
Subpoena 106:13,	Systema 75:2	31:14, 50:14,
106:14, 110:2,	systems 72:13,	56:8, 89:17,
124:19	76:11, 78:8, 132:9	89:18, 91:4,
subrooms 120:5		97:21, 98:9,
subscribe 73:6	< T >	103:11, 103:21,
subsequently 10:22,	table 41:14, 83:14,	104:12, 108:11,
12:23, 37:3	95:14, 134:20	120:2, 120:19,
substantial 44:14	tabulation 19:16	120:20, 121:13,
substantially 19:1,	tail 112:21	123:25, 124:4,
39:13, 43:24,	taken. 85:22	124:6, 125:24,
130:13	talked 22:4, 90:15	126:3, 126:4,
substantive 20:3,	talks 34:20	126:5, 126:7,
109:5	targeted 130:15	126:11, 128:14
subsume 22:17	targeting 107:17,	texting 6:3
success 31:9	107:18	thanks 6:18
successful 23:21	targets 93:22, 95:6,	themselves 6:17,
suddenly 71:14	114:25	72:25, 132:16
sufficient 15:2,	tax 11:8, 11:17,	there'll 98:16
55:9, 70:8, 81:20	133:3, 133:4,	they'll 89:22,
sufficiently 30:25	133:12, 133:15,	123:13
suggest 20:7, 57:7,	133:16, 133:18,	they've 28:12, 46:6,
60:21, 84:21,	134:3, 134:9,	92:2, 92:3, 94:8,
115:5, 121:8	134:22	97:12, 128:5,
suggested 37:9, 87:3	taxpayers 132:23	134:24
suggestion 38:10,	Taylor 1:38, 116:16,	thinking 20:17,
60:17, 69:25,	138:7	36:3, 39:21,
85:4, 121:10	teachers 76:12	46:16, 57:5
suggestions 37:10,	team 6:17, 10:11,	thinks 37:18, 38:9
48:5	126:1	third 59:16, 103:3,
summer 29:20, 31:4	teams 78:17	106:11, 106:19,
supplemental 44:1,	technically 52:3,	108:9, 109:21,
54:22	106:3	118:18, 118:21,
support 9:7, 16:14,	techniques 26:14	120:11, 125:6,
26:23, 27:3, 27:7,	telephonic 5:7	125:18, 125:21,
59:15, 75:17,	tells 109:22	126:21, 128:15
75:24, 78:5,	template 57:22	third-party 14:25
111:10, 112:10,	ten 11:24, 63:2	though 30:13, 32:14,
137:4, 137:6	tends 47:11	63:24, 68:17,
supports 73:24	tens 123:5	70:12, 82:9,
supposed 118:1,	tenure 87:6	96:25, 98:23,
119:2	term 14:24, 15:3,	107:25, 115:21,
Sur-reply 68:12,	27:8, 30:14, 98:6,	121:2, 130:4,
68:17, 70:13	120:9, 123:24	130:6
suspicion 78:14	terminate 70:22,	thoughts 20:12,
Suzanne 2:29, 16:8,	71:13	21:20
99:10	terminated 71:6	thousands 89:11,
Swain 1:38, 131:9,	terminates 14:13	89:23, 123:5
138:7	terms 13:2, 20:11,	three 11:7, 11:14,
		19:13, 29:11,

50:4, 67:14, 91:8,
102:19, 106:3,
106:6
three. 91:9, 93:8,
106:2
threshold 26:24,
45:4, 45:6
thresholds 56:13
throughout 10:24,
88:15, 101:13
throw 55:13, 69:25,
117:25
thrust 65:8, 65:19
tied 40:24
timekeeping 54:21
timely 38:23, 39:16
timetable 21:1,
21:23, 22:1, 60:25
timing 25:23, 26:12,
27:6, 31:14, 132:3
Timothy 2:5, 100:21,
119:12
together 11:21,
20:11, 38:6,
102:24, 122:2
toggle 62:22
tomorrow 113:16,
122:20
took 75:10, 131:9
tools 55:20
top 15:17, 104:15
topic 53:18
topics 90:24
Torres 134:18
total 11:3, 11:5
toward 18:22, 20:3,
106:5
towards 27:19
track 30:13, 31:1,
31:23
traffic 44:24
transaction 45:7
transactions 99:23
Transcript 3:49,
138:4
transcription 138:5
transformation 60:2
translates 60:17
transmission 5:24,
14:2, 16:1

transparency 94:20,
112:9, 132:21,
132:24
transparent 112:10
transpired 75:24
Transportation 1:22,
1:30, 2:45
Traurig 13:20, 59:13
traveling 137:9
travels 137:8
Treasury 131:23,
132:8, 132:22
tree 48:14
trees 48:14, 48:15
trial 48:25
tribunal 12:14
tried 79:11, 90:8,
118:5
tries 68:20
triggered 19:19
troubling 124:11
true 48:12, 51:13,
56:6, 91:22, 138:5
trued 39:17
Trust 17:19, 76:25
Trustees 76:14,
76:19, 76:22,
77:18, 77:20,
77:24, 78:13
try 9:8, 21:22,
24:21, 43:10,
99:11, 102:18,
104:19, 111:19,
112:7
trying 31:1, 38:19,
39:20, 68:18,
70:17, 81:25,
116:3, 129:13
turn 31:5, 32:15
turned 5:20, 5:23,
110:7, 110:20,
110:21, 117:7,
117:10
turning 115:6
turns 44:23
tutorial 23:14,
23:15
tweaks 136:2
twice 88:22, 92:25
type 12:11, 53:2,

94:17
types 20:23, 43:18,
49:10, 57:2
typically 132:11,
132:14
< U >
UCC 101:10, 101:13,
101:18, 103:1,
103:7, 103:17,
103:18, 106:4,
107:12, 111:13,
112:2, 113:25,
114:22, 118:9,
123:8, 123:14,
133:1, 133:19
ultimate 63:11
ultimately 48:4,
48:5, 54:1, 73:2
umbrella 76:11
uncomfortable 83:24
uncontested 59:17,
131:18
underfunded 62:13
underfunding 62:14,
62:21
underlying 109:5
underpromise 24:24
underrepresented
77:5
underscore 68:25
understanding 9:6,
33:2, 39:6, 44:12,
63:21, 83:9,
83:12, 103:17,
110:5, 127:4,
128:18, 128:24
Understood 31:7,
59:4, 80:15,
114:9, 117:10
undertake 79:17
undertaken 8:5,
42:7, 137:5
undertaking 23:24,
33:5, 33:9, 33:11
underwriters 92:10
unfold 75:9
Unfortunately 98:8
unhindered 110:11

unilaterally 76:23
union 23:11
unions 16:18
unique 38:7, 42:19,
65:14, 76:9
United 1:1, 1:40,
65:23, 66:3, 69:2,
69:5, 69:6, 79:2,
82:19, 83:2,
83:13, 85:2, 85:7,
138:6, 138:8
Unless 5:21, 14:15,
22:22, 40:12,
75:18, 136:15
unnecessary 78:7,
78:19
unprecedented 36:8
unredacted 35:6
unresolved 39:8
Unsecured 2:17,
19:14, 64:15,
64:16, 64:18,
67:17
Until 27:20, 33:6,
33:10, 34:5,
39:16, 80:6, 89:3,
91:10, 94:23,
104:16, 118:11,
120:22
update 13:22, 15:5,
60:18
UPR 7:4
urgent 9:7, 9:12,
29:25, 30:1
using 5:21, 88:16,
126:23
utilities 51:8

< V >

vacancy 66:23
value 57:4, 62:23,
102:5
variation 132:14
various 55:1, 56:22,
59:25, 63:4,
63:25, 117:20,
123:24
verify 40:21
verifying 53:5

version 94:18,
135:18
versus 20:15, 20:20,
28:1, 33:7, 51:4
vet 37:11
vibration 5:23
vice 121:3
view 21:12, 22:17,
27:5, 40:11,
47:15, 63:23,
64:4, 64:10,
81:21, 81:22,
87:13, 87:14,
107:10, 109:12,
121:11
viewed 54:9
viewpoint 73:8
views 73:6
vigilance 84:11,
84:19
vigilant 83:25
Vila 87:22
violated 100:2
violating 35:5
violation 35:9,
39:13
virtue 17:1
visibility 91:3
voice 84:6
voluminous 42:2
voluntarily 108:10,
110:15, 129:2
voluntary 106:11,
107:17, 108:11,
110:16
vote 69:20, 73:5
voted 72:24, 72:25,
73:1
votes 19:10
voting 76:15

< W >

wait 86:19, 92:17,
93:6, 94:23,
118:11, 120:22
waiting 27:20, 30:5
Walker 138:14,
138:15
wanted 10:4, 10:6,

18:3, 22:24,
23:23, 24:18,
33:24, 34:7, 35:1,
48:1, 64:22,
83:11, 86:15,
102:11, 116:20,
117:4, 123:3,
127:21
wants 9:16, 26:15,
29:13, 30:3,
38:13, 125:20
warrant 36:14
waste 96:12
ways 55:1, 58:8,
98:12
weather 15:11
website 64:7
Wednesday 9:15
week 11:1, 20:9,
28:4, 29:8, 32:10,
32:13, 34:20,
34:23, 48:20,
122:5, 126:15,
129:20
weekend 125:25
weekly 14:21
weeks 14:21, 15:1,
29:11, 118:5,
122:8, 129:23
weigh 116:1
weighing 72:5
Welcome 5:5, 81:13
West 47:6
whatever 20:8,
39:15, 45:1,
46:12, 113:5,
113:10, 115:24,
124:16, 134:22
whereby 105:9
wherever 32:18
whole 88:16, 90:18,
99:14, 128:1
wholeheartedly 137:2
whom 77:22, 84:25,
106:1, 106:12
whomever 81:25
William 2:31
Williamson 2:13,
34:14, 36:17,
37:23, 45:25,

46:1, 46:2, 46:25, 49:5 willing 65:12, 79:21, 85:14, 105:13, 113:24, 114:18, 128:6 willingness 47:15, 58:7, 126:4 Willkie 10:7 wisdom 54:15 wise 25:23 wish 27:25, 30:6, 73:19, 77:19, 77:24, 137:8 withdraw 133:20 withdrawing 128:21 withheld 134:25, 135:11 withhold 133:12 withholding 133:3, 133:4, 133:13, 133:18, 134:3, 134:22 within 15:4, 21:10, 30:16, 30:25, 31:25, 82:8, 100:3, 105:25, 126:15 without 31:23, 38:20, 43:5, 47:23, 52:3, 53:24, 71:15, 78:4, 82:25, 83:4, 83:22, 89:18, 93:16, 101:3, 110:3, 118:7 withstanding 7:19, 40:3, 40:4 witness 94:9 WITNESSES 4:3, 88:8, 125:11, 126:5 woefully 62:13 wonder 15:11 word 32:16, 83:24, 123:18, 123:21 words 17:21, 35:4, 35:19, 47:21, 55:25, 66:6, 67:18 worked 23:18, 23:20, 57:7, 104:7,	104:9, 104:10, 105:8, 120:9 working 12:7, 48:21, 50:16, 51:9, 51:13, 56:17, 72:5, 105:1, 111:18, 115:17 works 99:11 world 88:18, 91:15, 98:18, 130:19 worlds 93:7 worries 86:15 worry 42:13, 93:9 worse 39:8, 89:25 wrap 124:14 wrapping 105:18 writing 79:11, 87:14 written 44:6, 125:18, 125:19 < Y > year 15:21, 62:23, 96:4, 96:14, 96:15, 96:16, 116:24 years 95:1, 96:19 yellow 25:5 yesterday 8:18, 9:2, 25:19, 29:23, 30:21, 35:15, 42:11, 101:17, 102:3, 119:17, 136:4, 136:6 York 5:7, 7:14, 10:5, 13:4, 16:7, 26:16, 32:21, 93:12, 93:13, 121:7, 122:24, 125:2, 136:16, 137:3 Young 116:16 < Z > zero 90:12, 90:20 Zolfo 134:17
---	--